

THE
READING

Upon the
STATUTE

OF THE

Thirteenth of *Elizabeth*,

Chapter 7.

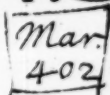
Touching

BANKRUPTS,

Learnedly and Amply
Explained,

BY

JOHN STONE of *Grays*
Inn, Esquire.



London, Printed by S. G. for W.L. D.P.
H.T. G.B. and T.D. 1656.

Bv Z 12 Linc

DM

al
fr
of
sq
go
w
ou
th



The Reading of *John Stone*, of
Graves Inn, Esq; upon the Statute
 of 13th *Elizabeth*, Cap. 7. touching
 Banckrupts, learnedly and amply
 explained.

Oratio Lectoris.



EE was surely *liber & legalis*
homo, that said, *Servi sumus*
omnes: but he added, *Legibus*
servi sumus omnes, ut liberi si-
mus, For we are, and must be,

all Servants to the Law, if we mean to live
 free and happy lives; for the Law is the Rule
 of Right, by which all our Actions are to be
 squared; so as if you go not by the Law, you
 go not by Rule, or Order, but all our doings
 will be nothing else but *alia enormia*, things
 out of rule: But as all men are bound to keep
 the Law, so We above all men that professe

B

the

the Law, that study and learn by it the Art of Right and Wrong, are doubly bound not only to serve it, & observe it, but also to honor it, to advance it, and (to our powers in all things) to maintain it.

Those that have gone before me in this place (amongst other things) have most commonly said something in the commendation of the Law; but for this time I mean to save that labour; and my reason is, for that two most worthy men of this our age (the one famous above all other for his Learning, the other inferiour to few for his Wit) have both of them in their Epistles in their late Reports written and set down as much of this Argument (I mean) of the commendations of the Laws, and of the profession and Professors of the Law, as I can say and more.

But to leave then the General, let me speak something of this Particular Law which you have heard read, upon which I have a little settled my thoughts and meditations.

Commerce (that is, Trade of Merchandize) it is a thing that hath alwayes been so well known to bee profitable to all Nations, if it be well handled, that our fore-Ancestors many years agoe so favoured Merchants, that for their benefit a Law was made of purpose, called, *Statutum de Mercatoribus*; so as where at Common Law, if a Debt were owing to a man, he could

could not by Law recover this Debt without Process and Pleading, and yet then no mans Lands were lyable to the Judgements; By that Law (if once a man acknowledged himself to be indebted to a Merchant, and payed not his money at his day) without process, without pleading, without further sute or Judgement, the Merchant shall have present Execution against his Debtor, both for Body, Goods, and Lands.

It is true, that in those dayes few *Englishmen* were Merchants, but Strangers brought their Commodities hither, and fetched ours; but now that course is clean altered, for very few come from Foreign Nations to us; but we our selves Trade and Traffique into all parts of the habitable World *Christiandome*, or *Heathenish*, and into many parts not inhabited by any humane Creature.

But as the Number of Merchants hath increased, so have their cunning and crafty dealings increased, so as now a dayes it falls out, that we had more need to make Laws against them, than for them; for it is found to be (now a dayes) a matter of more difficulty for men to get their Debts of Merchants, than it was in times past for Merchants to get their Debts of other men, *Sed ex malis moribus, bone leges.*

Thereupon within this last Hundred years there have been many good Laws made against

them, and especially against them whom the *Civilians* call *Decoētores*, that is, Banck-Merchants, for in these three last ages there have been published, amplified, and confirmed against them three severall Acts of Parliament, one in King *Hen. 8.* time, one other in the 13 *Eliz.* which you have heard read, and the last in *primo* of King *James.*

I have not so little discretion as to take upon me to commend these Laws, for so I should assume to my self an Authority of the allowance, disallowance, and censuring of Laws made by those that know better what belongs to those matters than I doe, and I shall idly spend the time in praising of them, that stand in no need of my commendation, only I will say, (as *Thirning* saith in another Case in 14 *Hen. 4.*) Our Masters that were before Us, and *plus scavant que nous*, have made and published these Laws; for my self, that have undertaken to read or comment upon one of these Laws, I will discover thus much, that this Law was never yet read on in this House, nor in any other; the use or help of which I could not by any means obtain; but you may say to me hereafter, I need not tell you this; for as Sir *Tho. More* answered a bad Poet, that underneath his Verses had written, *Raptim scripsi, stulte quid hic scribis?* Why dost thou say of thy Book, *Raptim scripsi, nam liber hoc loquitur te reticente*
tuis;

thus ; so I shall make it appear to you plainly before I have done, that I had no help in these matters, for if any wise or grand-learned man had been of my Councell, I should never have gone so badly through my business.

But I have an ease of one thing that much troubled a Gentleman of a Noble Family, who being to publish a Book, said nothing troubled and terrified him so much from publishing his Work, as his friendly foes expectation ; I have an ease of that, for you all know my weakness so well, that I am sure you expect nothing from me more than ordinary matter ; I pray God I may go well through with that ; & there is another thing that easeth my minde as much (on the contrary part) which I learned of a worthy Gentleman, not many years agoe, that supplied this place before me ; for said he then, and so say I now, I will do my best endeavour to please you all, but as he said further, so say I, that I have absolutely set aside this vain hope, or impossibility, called expectation to please all : But I hope this, and no more, that my friends will make the best of the worst.

And I must ask pardon of you all in one thing, which is this, all the most excellent Poets, and eloquentest Rhetoricians, and many great Historiographers, in all their best Works, they bring in alwayes one man that

goes from the beginning to the ending of their discourses, whose famous vertues, and noble acts, grace their whole Work : But so much the Law differs from their Acts, that I must be enforced to the quite contrary ; for in every act, and in every Scene, (that is) in every Division, and in every Case I put, I must bring in a running Tromper and Imposter (a Banck) But I shall desire you to respect rather the goodness of the Law, than the lewdness of the Breaker, therefore, and that my endeavors may tend more for your Learning and mine, than for our Delights ; Now my Law is this,

1. *Who shall be said a Merchant, or other person, seeking his Trade of Living by Buying and Selling, within this Statute.*

An Adventurer in the *East-India* Voyage is within this Statute.

To *New-found-land* for Plantation, or Discovery, is not.

An Adventurer in the *Virginia* Voyage is not.

One of the *Muscovia* Company, Adventurer to *Greenland*, and Discovery, is not.

A Clothier, or any manuell Occupation which is within the Statute of 5 *Eliz.* of *Labourers*.

A Grasier is no Mechanick.

A Gentleman goeth beyond Seas, and giveth his Bills of Exchange to be paid here by his Baylyor Steward, who accepts it, and after that protesteth, no Merchant.

Goldsmith, Hammer-man, Goldsmith-Shopkeeper, the same of Jewellers:

A Feme-Covert sole-Merchant in *London*, the Husband is Out-lawed, the Commissioners sell the Land of the Husband, who dyes, the Wife brings Dower, *London 11. Ash.* she is Sister to the elder Brother, and after another Brother is born Heir to the elder.

There is a Difference between a Smith, and an Ironmonger.

A Feme-Covert sole-Merchant, an Obligation is made to the Husband and Wife, and they are divorced, and she is a Banckrupt.

An Inn-keeper is within.

A Courtier takes a Lease of the King, of the Pre-emption of Tynn, if he shall be within the Statute during his Term.

One hath a Monopoly of the sole making & selling of Glasse, or Cards, he is not within, but any who hath the sole importing or exporting of any Commodity is within.

A Merchant gives over his Trade, and seven years after becomes *non solvent* for money he owed while he was a Merchant, he shall be a Bankrupt. *Jo: Quarles.*

But if it were for new Debts contrary, *Hickmoughs Case.*

But if he were indebted, and gives over his Trade, and his Debts are continued at interest, or the Bonds from time to time renewed, he is no Bankrupt, by *John Stone*.

Where one shall sue for his Debt before it is due.

If an Assignee shall have a Re-extent.

If an Assignee shall have a Writ of Errour.
See *Davies Reading*.

2. *Who shall be said a Subject born within this Realm, or any of the Kings Dominions, or a Denizen.*

One naturalized by Act of Parliament.

The Son of an Ambassador of *Venice*, born here, and after sworn to his King.

One is made Denizen, so that he is onely a Purchaser for his Life.

One born upon the Sea, upon the Coasts of *Holland*.

One born in the Port of *Deep*.

The Bishop of *Sodor* born in the Isle of *Man*.

A Denizen, upon condition that he shall not depart the Realm, and he for Debt departeth.

One made Denizen of *Ireland* by the Charter of *Ireland*, 11 H. 8. *Kelloway*, fol. 202. A difference between the Isle of *Man*, and *Wight*, &c. A

A Pewterer goes beyond Sea, and there useth his Trade, he shall lose his Privilege, and the benefit of an *English-man*, saith the Statute of 25 *Hen.* 8. *cap.* 9.

One hath a Prisoner in Execution for Debt, and becometh a Banckrupt, if he escape, if the Assignees may have an Action of Escape.

Quere, If the Banckrupt release to the Prisoner, if such a Debt may be assigned, for his Body is a Pledge.

3. *What shall be said a departing from his House, or out of the Realm.*

A Merchant keeps his Ship for fear of Arresting, which Ship is by Pyrates or Tempest driven beyond Sea.

A Merchant departs the Realm to Merchandize, and having loss by Tempest, he returneth not upon a Privie Seal; if the King or his Creditors shal have his goods.

A Commoner keeping his House.

A Merchant indebted, leaveth off to Merchandize, and after keepeth his House.

One keepeth his Ship, or his Mil, or being Church-warden, keeps himself in any part of the Church.

One that hath no House, but an Upper-Chamber.

One that is a Keeper of a Castle of the Kings.

One

One that hath no House, but sojournes now in one place, and after in another.

Absenteth himself.

A Capias de Excommunicato Capien do is awarded against a Merchant, who absents himself for fear of being thereby arrested; no absence within the Statute generally.

An Attachment out of Chancery is awarded against a Banckrupt, for not payment of money decreed, if he absent himself, he is a Banckrupt.

Contrary if it were for not making a Conveyance.

Taking of Sanctuary.

Parries Case before the Bishop of Ely, Feb. 1. 1616.

A Recusant Con vict grants an Advowson for 21 years, and dyes, the Church becomes void; The Question is, if his Heir, or the lessee shall present upon the Statute of 3 Jacobi.

4. *Sufferance of himself to be arrested, or imprisoned for six moneths, by 1 Jacobi.*

Outlawed.

Outlawed without Proclamation.

An

(11)

An Outlary reversed by Errour, and Averment; a difference.

One outlawed for Felony committed after he is a Banckrupt; if the King by the Outlary, or the Creditors shall be preferred for the goods.

One outlawed in Ireland.

5. *Yeelding himself to Prison.*

Imprisoned by 1 Jac. for a fine in the Star-Chamber by Exchequer Process.

For a fine before the High Commissioners.

For Debt recovered in the Admirals Court.

His goods being attached or sequestred.

A Merchant Farmer of a Rectory, the Parson serveth not the Cure.

6. *What authority the Commissioners have upon the body of the Banckrupt.*

A Merchant confesseth himself to be the Villane of I. S. who taketh his goods.

A Merchant enters into Religion after Banckrupting or before, his Executors, &c.

A Banckrupt is made a Clerk.

7. *What Lands, Tenements, and Hereditaments of a Banckrupt which is Free-hold, may be sold, which he hath in his own right,*

or purchased joyntly with his wife or children, or shall be said to descend or come to him before, or after he is become a Banckrupt.

Sale of Lands in Tayl.

If such a sale may prejudice him in remainder, or it shall be construed as a Feoffment of Record, as a fine is; One hath Land in right of his Wife, if it may be sold to one to have during the Coverture.

A Merchant makes a Feoffment to one upon condition to pay money, if the Commissioners may transerre this power to perform the condition to any.

A Merchant maketh a Feoffment upon condition that the Feoffee shall pay the money, and it is not paid, if the Commissioners may give authority to any to enter for the condition broken.

Land is devised to a Merchant, or a Remainder, or an use is limited to him, if he can waive after he is a Banckrupt.

Rentseck whereot there is no seisure, shall be sold.

A Barony, Earldom, or Baronetship, are Hereditaments, and yet shall not be sold.

A Villane shall be sold, but if the Banckrupt infranchise him, *Quere*, If he shall be sold again.

The

The Office of Warden of the Fleet, or Gaoler of Inheritance, and all other Offices of Inheritance shall be sold; contrary of Offices of Trust, which are but for life.

A Monopoly granted to one and his Assigns, shall not be sold.

Land escheated shall be sold; but *Quere*, if it escheat after the Commission, and death of the Banckrupt.

One bargains and sells a Seigniory to a Banckrupt, and after Commission the Banckrupt dies, and the Deed is inrolled after the Commission.

The Banckrupt having Land holden in *Capite* dyes, his Heir within age and office is found, if they can sell.

The same if his Heir be an Ideot, or a Lunatick.

A Banckrupt becomes Lunatick, and Office is found.

A Banckrupt is Tenant in tail the remainder in the King, if it can be sold but for the life of the Tenant in tail.

Tenant in tail grants all his Estate, and becomes a Banckrupt, the Land shall not be sold.

Tenant in tail of a Rent is disseised thereof, and dies, his issue is a Banckrupt, and brings a Formdon, yet the Rent shall be sold.

Two joyn Tenants, the one is a Banckrupt and dies, if his part shall be sold, not, because
the

the Survivor is not in by him.

Tenant in tail, the remainder to an Alien, Tenant in tail is a Banckrupt, and suffers a Recovery, the Land is sold.

Tenant in tail dyes without issue, an office is found, if the Land shall be sold for the King.

8. *What Copyholds they may sell, and what agreement made with the Lord is good.*

The Lord sells the Freehold of one sole Copyholder to A. the Copyholder becomes a Banckrupt, if the Commissioners can sell.

Copyholder in tail with a remainder, where no recoveries, or wher recoveries are remedied against the Lord who will not compound.

A Copiholder by licence of the Lord, makes a Lease for one and twenty years, the Copyhold escheats, *Quere*, if the Lease is good against the Lord.

A Feme by Custome is to have a Widdows Estate, the Banckrupt makes such a lease, if the Feme shall avoid it.

A Banckrupt Copyholder makes a Feoffment, the Lord enters, the Commissioners sell, the Vendee tenders a competent Fine, the Lord refuseth to admit him, the Vendee enters, the Lord brings Trespass, it lyeth not.

A Banckrupt makes waste, the Commissioners

oners sell, the Lord enters for a Forfeiture.

A Copyholder surrenders into the hands of two Tenants, he to whose use is a Banckrupt, the Lord dissolves the Mannor.

9. *What Fees, Annuities, Offices, Goods, Chattels, and Debts, the Commissioners may sell.*

A Merchant acknowledgeth himself to be the Villane of I. S. the Commissiomers may assign his Debts, *Quere*, of his Goods.

A Lease for years, provided that he shall not alien, the Commissioners sell, if it be a Forfeiture.

10. *What Uses, Interests, Rights, or Titles of a Banckrupt the Commissioners may sell.*

A Banckrupt hath an Advowson, the Church becomes void, the Commissioners sell, the Vendee presents, if this be Symony.

A Banckrupt presents one who is prty to his Banckrouting, who is indicted, the Commissioners sell, their Vendee brings a *Qua impedit* within six moneths.

A Banckrupt hath a Warranty, what use the Vendee shall have of it.

A Banckrupt hath the next avoidans, the Commissioners present one for money paid to the Creditors.

The

The Disfeisor dyes seized after five years, the Disfeisee becomes a Banckrupt.

A Woman hath a Rent charge, she takes a Husband a Banckrupt who distrains, and rescous is made, if the Commissioners can sell all the Rent which shall be due during the Coverture, 1.E. 3. fol. 5. Pl. 23.

The Commissioners sell a Rent, or Reversion, if good without Attornment.

A Banckrupt loses by erroneous Judgment, if this right to bring a Writ of Errour may be transferred by the Commissioners.

The same of an Entry for condition broken, or performance of a condition.

A Banckrupt becomes Lunatick, the Commissioners sell, an Office is found.

11. *What Deed inrolled in one of Her Majesties Courts of Record shall be good.*

The Deed is not acknowledged before any of the Masters of the Chancery by the Commissioners.

The Deed is not inrolled within six Moneths, the Statute of Inrolments saith, by bargain and sale only.

I. S. by prescription holdeth Plea in his Mannor above fourty shillings, the Deed is there inrolled, after sale and before Inrolment the Banckrupt takes a Wife, and dyes, if

sh:

he shall be endowced, the Deed is rinolled in the Maiors Court in London; no question of the Hustings.

12. *What shall be said a just Debt, and how the Statute shall make an apportionment between the Creditors; what is their duty to do, and what remedy they have for their portions, and who shall be said a Creditor, and who shall be relieved.*

A Merchant indebted as Suerty, or Bayle for a Gentleman, but not for himself.

If one may sue for a Legacy before the Commissioners.

How a Debt doubtfull shall be tried before the Commissioners.

For money decreed to him in the Chancery or Star-Chamber.

One Creditor sole sues a Commission, and keeps it with him secretly untill the last day, within four moneths, and then the Commissioners sell the Land, and pay all to this Creditor, the others never having notice thereof; what remedy for them?

The Commissioners sell all the Land, and distribute all, but this is not full satisfaction, after other Land descends to the Bankrupt, if they can make an other sale, and new distribution.

The four moneths are past, and part of the Estate distributed, new Creditors come in, if they shall be admitted to have contribution of the rest, which is not yet distributed, and if such new Creditors shall have allowance ratably with the other Creditors according to the remnant of their Debts, or according to all paid, or not paid.

A Bankrupt becomes indebted to one who had notice that he is a Bankrupt, if he shall be admitted a Creditor?

One hath a Debt which is not yet due, yet he shall be relieved with rateable respect of abatement for the time.

13. *What Act or Conveyance made by a Bankrupt before or after he is a Bankrupt, shall be good.*

He takes a Wife after he is a Bankrupt, if she shall be indowed of Land, which he had before.

He takes a Wife after he is a Bankrupt, and Land descends to him, if she shall be indowed.

A Bankrupt Disfeisor, the Commissioner sell, and before the Deed is inrolled the Disfeisor releases to the Bankrupt.

A Bankrupt presents one who is privie to his intent, who is indicted, the Commissioner sell

sell, the Vendee brings a *Quare impedit*.

A Bankrupt becomes a Clerk-Convict, and hath goods within a Liberty.

A Bankrupt after Commission awarded becomes *felo de se*.

A Conveyance to the use of a Daughter a Widdow formerly advanced.

A Merchant Tenant in Knight-service, his Heir within age makes a Feoffment by collusion, the Lord after becomes a Bankrupt, this is no fraud against the Creditors, but yet the Land shall be sold, for though it be fraud between the Lord and the Tenant, yet there is a Trust between the Feoffor, and Feoffee.

14. *What Declaration or Account the Commissioners shall make to the Bankrupt, and whether the Proviso be a condition, and what remedy the Bankrupt hath for to cause them to account.*

The Commissioners all dye after the sale of the Lands, and distribution, what remedy hath the Bankrupt for the rest against the Executors of the Commissioners, or against the Survivor of them.

After the sale, and before distribution, all the Commissioners dye but two, what shall be done.

A new Commission shall be awarded to o-

ther Commissioners (not to them) and they shall be called before the new Commissioners, as they who have the Estate of the Bankrupt in their hands.

15. *What shall be said a concealment of the Estate of a Bankrupt, or of his Person, or a fraudulent claim or demand, or detaining of his Estate, and what remedy for the forfeiture or fine.*

16. *What damage is it to be out of the Kings Protection, by this Statute.*

17. *Who shall be said a Creditor within this Statute.*

A sole Creditor if he can sue the Commission.

A Mortgagee of Lands or Goods, if they can sell them.

Conussee of a Statute-Merchant, or Recognizance.

The Plaintiff who hath the body of the Defendant in Execution upon a Judgment at the Common Law.

He who hath the Bankrupt in Execution upon a Statute Merchant.

A Merchant is taken in Execution, and after becomes indebted to A. and remains six months

neths in Execution, and so is a Bankrupt; if A. shall be a Creditor, that is, if he be a Bankrupt from the beginning of his imprisonment by relation, or only after the six moneths.

A Merchant is imprisoned for Debt, the Gaoler credits him for Victuals for a year, if he shall be a Creditor for part, for all, or for none?

A Bankrupt is convicted for keeping of Inmates, or erecting Cottages, the Statute gives an Action of Debt to the Lord of the Leet, he is no Creditor.

18. *What Conveyance the Commissioners may make after the Death of the Bankrupt.*

A Feme Covert sole Merchant within age, the Baron and Feme levy a Fine of the Land of the Feme, a Commission is awarded, the Fine is reversed for Non-age of the Feme, with a Cessation of Execution during the life of the Baron; they have issue, the Feme dyces, the Commissioners sell, the issue enters.

The

The first Division.

Who shall be said to be a Merchant, or other Person, using or exercising the Trade of Merchandizes, by way of Bargaining, Exchange, Bartry, Chevisance, or otherwise in grosse, or by Retail, or seek his or their Trade of Living by Buying and selling.

1. **A**. Makes a Lease for years to B. and grants the reversion to C. in tail; B. attorns and enters, A. grants the reversion of C. to D. being a Denizen of Ireland, C. commits Treason, and attorns, D. becomes an Adventurer to the *East Indies*, C. is attainted, D. is non-solvent, and having no House keeps himself on Ship-board, C. dies without issue, a Commission is awarded, and after supen the Commissioners sell the Land by Deed enrolled in the Maiors Court in London.

D. is a Bankrupt within the Statute, and the sale by the Commissioners is good.

2. Tenant for years of an Inhe, makes a Feoffment in Fee to Baron and Feme, an Alien with

with livery within the view to the Feme who enters, the Baron is made King, the Lessor being an Adventurer of *Virginia*, releases to the King by Deed inrolled, an Office is found, the Queen waives, the lessor enters & keeps the Inne, and being non-solvent is made Keeper of a Castle in the Isle of *Man*, where he was born, and there remains.

The Lessor is a Bankrupt within this Division of the Statute, and the Commissioners may sell the Land.

3. A Disseisor makes a Lease for life to a Feme sole, the remainder to the right Heirs of I. S. she makes a Feoffment in Fee upon condition, and enters for the condition broken, and grants a rent charge a A. a Goldsmith of *London* naturalized by Parliament, the Disseisor releases to the Feme, she marries A. the Disseisor enters, and makes a Feoffment to a Stranger, I. S. dyes, the Feme hath issue, and dyes, A. enters, and being non-solvent surrenders to the issue and departeth the Realm to Merchandize, the Commissioners sell the rent, the right Heir of I. S. enters.

A. is a Bankrupt within this Division of the Statute, and the Vendee may presently distrain for the rent.

4. R. Tenant in tail makes a gift in tail to M. hath issue, and dyes, M. makes a Feoffment to C. and dyes without issue, his Wife not the issue of R. enters, a Son is born who enters, the Feoffee enters, and being a Grasier buys lean Cattell, and feeds them upon the Land, and sells them when they are fat, and sells his own House, and after being non-solvent keeps his Neighbours House.

C. is no Bankrupt within this Statute, and the issue of R. recovers the Land by form-don, and the Son born hath no right.

5. A man hath issue, A. and B. two daughters, they disseise I. S. and infeoff their Father; A. marries C. and by his leave becomes a Sempster in the Exchange London; the father dyes, I. S. releases to the Husband, B. brings a *Nuper Obiit* against A. and C. C. makes default, after default, A. is received, and being indebted to divers Creditors disclaims in the blood, the Husband keeps the House.

The Husband is a Bankrupt within this Statute; and the moiety of the Land is liable to the sale of the Commissioners during the Coverture.

6. One makes a Lease for years to A. the remainder

remainder to B. for the life of A. the remainder to the right Heirs of A. B. dyes, A. having issue a Daughter, his Wife with child with a Son, devises the Land to I. S. for the life of M. for payment of his Debts, and makes I. S. his Executor, and dyes, I. S. enters, the Daughter being a Feme Covert sole Merchant in London, enters, M. dyes, the Daughter is Non-solvent, and elopes, the Son born enters.

The Daughter is a Bankrupt within this Statute, and the Commissioners may sell the Land.

7. One devises his Land to A. B. and C. Et *heredibus*, A. paying 10 *li.* they enter, and A. being an Exchanger enters into Religion, B. releases to C. the Bills of A. are protested, C. dyes, the Creditors of A. brings Action against his Executors, and before Judgement A. is deraigned, the Commissioners sell all the Land.

A. is a Bankrupt within this Statute, but the sale is good only for a third part.

8. M. and F. joyn-Tenants of a Horse, Mortgage him to E. a Feme sole, who intermarries with M. F. being a Horsecourser, performs the condition, and takes the Horse, E. by commandment

mandement of her Husband steals the Horse, M. and E. are divorced, *causa præcontractus*, M. dyes, E. is indicted for Felony, the Horse-courser becomes a Bankrupt, the Commissioners sell the Horse.

F. is a Bankrupt within the Statute, and the sale is good.

9. The King makes a Lease for years, rendering rent of the Pre-emption of Tynne in Cornwall, to I. S. one of the Grooms of the Privie Chamber, who becomes indebted to divers persons for Tynne, bought of them by his Deputies, and sold to Merchants, the term expires, I. S. continues his Debt by renewing assurance, and payment of Interest for seven years, and then keeps himself in the Kings House for avoiding the arrests of his Creditors, the Commissioners sell his Fee.

He is no person who is a Bankrupt within this Statute, and the sale is void.

10. A Feme sole being seised of Land in Fee, B. contracts with C. an Ironmonger, and D. a Smith (for money to him by them paid) to marry A. and that after the Marriage he and A. will leuy a fine of the Land of A. to the use of C. and D. and their Heirs; the Marriage

is had, the Fine is levied, C. is outlawed, D. departeth.

C. is a Person who is a Bankrupt by this Statute, but not D. and the moiety of the Land shall be sold.

The Points of the Second Case.

1. **W**hen Tenant for years makes Livery within the view, the Question is, Whether the Feoffor, or the Feoffee, or both, or neither, are Disseisors. See *Ash Disseisin*.

It appears by our Books, as in 10. E. 4. fol. 18. that before the Statute of *W. 2. cap. 25.* Tenant for years had made a Feoffment, hee was the onely Disseisor, and by the Statute, *Tam feofator quam feofatus*, shall be Disseisors; so as *vivente altero eorum locum habeat predictum breve* (meaning the Writ of *Assise*) and the very reason why that Statute was made was to avoid the mischief which was put in practice in *Farmer's Case*, in *Coke lib. 3.* For even as there Tenant for years, or a Copyholder would levey a Fine, and yet keep possession, and then thought by suffering five years to passe

pass without entry or claim by the Lessor, that he might gain the Land ; so here Tenant for years would make a Feoffment, then he being the only Disseisor, if he dyed, there would no Assise lie against the Feoffee ; and so the Lessor lost the benefit of this *festinum remedium*, which the Statute gives : This very Question being moved by chance in the Court of *Wards*, *Hesketh* was of opinion, that if before the Statute, Tenant for terme of years had made a Feoffment upon the Land, he was the only Disseisor if within the view the Feoffee was the only Disseisor. But what such a Livery within the view would work since the Statute, he made a great doubt ; if I should hold that neither of them both were Disseisors, and that nothing past but only the term, I should very well maintain the conclusion of my Case to the end, for nothing doth actually passe by Livery within the view, but by Operation of the Law, and the Law will never work to doe any man wrong, and therefore, 9. H. 7. Tenant for years of one acre, and in Fee of another, makes a Feoffment of both, and makes Livery only in the Acre wherein he hath Fee, nothing passes of the Acre he had for years.

28. H. 8 D. 18. One hath a House leased, and one close in possession, &c. for act in Law never will work a wrong.

41. E. 3. 5. The Tenant pleads *non tenure*, if the Land descend *pendente breve*, the Writ shall not abate.

So if nothing passe but the term, then if I resolve the first point of my Case, that the term remains with the Queen after Marriage, then the release made to the King works nothing, and so the Lessors best right is to enter for a Forfeiture, although the Queen afterwards waive; but I will let this Question rest a while by reason of, &c.

20. *Eliz. D.* Where by the opinion of the Chief Justices, That when Tenant of 100. years makes a Feoffment by Letter of Attorney, the Lessor being upon the Land that the Fee passeth.

2. Whether Livery within the view bee good without Deed?

3. Whether a Feoffment made to Baron and Feme without Deed and Livery to the Feme sole, be good to the Husband untill disagreement?

4. Whether if Tenant for years enfeoff 2. and the Lessor releases to one, if he shall exclude his Companion?

5. If Baron and Feme are Disseisors, and the Disseisee

Disseisee release to the Baron, if he shall exclude his Wife?

6. A Feme Covert hath a term, and the Husband is made King, if the Queen or the King should hold the term?

7. Baron and Feme Disseisors, the Baron is made King, the Disseisee releases to him, if it makes the King & the Queen Joynt-Tenants, or Tenants in Common, or if they shall be seised by moities, or intireties, or if the release be not utterly void, is the seventh Question.

8. I. S. is disseised to the use of the Prince, who is made King, the Disseisee releases, if this be not void, for then the King agreeth to the Disseisin.

9. A Feoffment is made to a Feme Covert Alien, the Baron is made King, Office is found, if the King shall have the Land?

10. A Feoffment is made to a Feme Covert, and the Husband is made King, if she can waive?

Points upon the Statute.

1. **W**Hether an Adventurer into *Virginia*, be within the Statute ?
2. Whether an Inn-keeper be within the Statute ?
3. Whether one born within the Isle of *Man* be within the Statute ?
4. Whether the keeping of one of the Kings Castles, be a keeping of his House within the Statute ?

2. and 3. Questions are, Whether a Feoffment made without Deed to the Husband and Wife with Livery within the view to the Wife only, and she enters, will invest any thing in the Husband.

That Livery within the view may be made without Deed, I make no great question, It is true, that the Books are both wayes.

For 38. E. 3. 32. 38. Aff. 2. Baron and Feme, *Allford*, 41. E. 3. *Jo: Stes Case*.

Temp. Hen. 8. Brook, It is good saith he by Deed by Livery within the view.

Thorowgood's Case, *Coke*, lib. 9. If of the ground, he saith, see you this Land enter according to the Deed.

Cont.

Cont. 39. *E. 3. Ass.* 12. I vouchsafe you the Land; 42. *E. 3. Fitz.* Feoffment. 54. the same Case, *Wich:* made he a Deed to his Father, *Lass. non. Wich:* was the Land in *vica*, *Ass.* it was half a mile from the Church-yard. 11. *Ass.* 6. 11. *E. 3. Ass.* 86. Feoffment of all but one Chamber. 43. *Ass.* 20. *per* Brook, Feoffment without Deed.

But the question is, whether a Feoffment to two or three by Deed with Livery to one is good to all, but without Deed, but to him to whom, &c.

10. *E. 4. 1.* 8. *E. 4. 12.* 15. *E. 4. 18.*

But here the Ba: and Feme cannot take by moities, and their Estate is but one Estate, and they are Disseisors, both at Common Law, and also by Statute, so as if the Ba: consent afterwards, he consents as one that consents to a Disseisin made to his use.

15. *Ass.* 11. by agreement to a Rescous made by a Stranger, the Tenant is a Disseisor.

37. *Ass.* If my Tenant at will, enter into another mans Land, lying by my Land, or take estovers or common, if I consent to it, I am a Disseisor.

Tenant for years enfeoffes, 2. and the Lessor releases to one of them, if hee shall hold his Companion out.

27. *E. 3. cap. 9.* gieves an *Ass.* of novel disse. to
Tenant

Tenant by Statute Staple against him that outs him, as against a Disseisor; yet hee hath no Free-hold, for 1. E. 3. *A quid juris clamat* Iyes against him, although he be but disseisor *fiſtitius*, yet at the election of the Disſeſſee, he is a Disſeisor in Law, as 7. E. 4. the Vouchee is but *tenens fiſtitius*, yet a release is good to him.

If tenant for years inſeoff 2 & the Lessor brings aſſiſe against, one he ſhal not plead that his companion is alſo Tenant not named; for by the Statute of 34. E. 1. *de Conjunctim ſeſſatis*, he muſt ſhew of whoſe Feoffment, which if he do, he overthrowes his own Eſtate, and muſt plead himſelf was a Diſſeisor, which the Law will never allow; for 1. E. 4. *ſol. 7.* no man ſhall be ſuffered to ſay, that he himſelf was a Diſſeisor. *Coke, Beverlies Caſe 4. Rep.*

To ſtultifie himſelf, *Herl 5. E. 3. non ſana memoria* inblemiſht himſelf, 35. *Aſſ. 10.*

It is true, that in reſpect of themſelves, they are in by Feoffment and Title, in reſpect of the Lessor they are Diſſeisors; then the queſtion is, who ſhall be in election, and who ſhall interpret how this release ſhall work, the Lessor, or the Leſſee, or the third perſon.

It is probable to ſay the Lessor, for *cujus est dare &c.* and H. 7. If one man be to pay two ſums at one time and place, and pay but one, it is in election, and interpretation of the

D

Payer

Payer and not the Receiver, which sum was meant to be payed.

It may be said the release, &c. for the party to whom a Deed is made, if it inure to 2. intents, shall, &c. as 7. H. 6. a Feoffment may be used as a confirmation, 15. Eliz. D. release, and grant of a rent.

But I conclude the third person shall take benefit, &c. First, for the reason that *int. &c.* But they are disseisors, not at Common Law, but by Statute, for the benefit of the Lessee, of which Statute he may take benefit if he please, or waive it: 3. E. 4. 21. H. 7. 32. 19. Eliz. D. Alien and Denizen challenge *mediatatem lingue*, so here he hath his election to make him a Disseisor by bringing his *Aff.* as a Tenant in by title by the release.

Baron and Feme Disseisors, and a release to the Baron: whether shall this inure to the Feme, for they are seised not by parts, but by intireties, it shall go all to the Husband, for *flagitiosum est nullam esse societatem, it is feudum. princip. & communitatem latronum.* The question hath been, if a Feme sole be a Disseisor, and marry, whether the Husband be a Disseisor or not, 6. E. 3. 43. he is not, for in a Writ of Entry, *jur disseisin* against him and his Wife, he had the view; but in our case (I take it) that if no other thing had happened between the disseisin and the release, the Husband should have had all.

The

The Husband is made King, the question is, Baron and Feme are Disseisors, the Baron is made King, the Disseisee releases to the King what is wrought. First, when Baron and Feme are Joyn-tenants by disseisin, by title, or by disseisin, all is one, & the Husband made King; whether do they remain Joyn-tenants, or else are they Tenants in common? or else hath the King all? or the Queen all? I hold them to be Tenants in common, although this case can be matched or compared with no case of the Law, wherein the alteration of the persons only shall change the Estate of the parties without making of any new conveyance of the Land. 32. H. 8. *Brook Deraign.*

22. H. 6. 2. A Feoffment to an Abbot, and I. S. they are Tenants in Common, but a Feoffment to A. and B. and A. is made an Abbot, all shall survive to B.

So if a Feoffment to A. and B. and A. acknowledgeth himself Villein to I. S. this alters nothing till I. S. enter; but whatsoever the King hath before he is King, or whatsoever descends to him, or he purchases after he is King, he holdeth all *in jure corone sue Anglie.* *Calvins Case, ex parte matris, Barkleys Case, Gavelkind.*

Lancaster. Partition int. sorores Queen Eliz. Queen Mary, Queen Katherin, Ferdinandoes Daughters.

So as the Kings possession alters the very nature of the Land, and so makes him and his Wife Tenants in common.

And that it makes her as it were a Feme sole I need vouch no authorities, who all know in experience.

18. E. 3. fol. the Queen alone brought
Qua: impedit.

49. E. 3. 4. *Cavendish*, the King may give Lands or Goods to the Queen.

9. H. 6. 13. *Margery Parkers Case.*

14. H. 4. 67. *Sci. Fac.* by the Duke of *Suffolk* against the Queen, to repeal the Patent where by the King had granted to the Queen the Land of the Dukes Father, *Tirwhite*: in a times a *Præcipe* hath been brought against the Queen, for she hath alwayes been a person exempt, notwithstanding the Coverture, so be their persons being changed, &c. it is as if the King were dead.

Then have I driven it to this passe, that the release can work but to a moiety, the question being, whether it work for all or for a moiety or none, that it should work for none.

If a Feoffment be made to the Wife, and before agreement or disagreement, the Baron made King; I say he comes too late now to agree or disagree, no otherwise than if he had dyed.

Then the question is this, One makes a

seisin to the use of I. S. and he is made King, can he now agree to the disseisin? the rule is, the King cannot be a Disseisor; it is true, that in times past he might.

20.H.3.Aff.431. *Non habet ingressum nisi per disseisinam quam Dominus Rex fecit querenti dum fuit infra statem, & in Custodia Comitis de S.* and the Tenant saith, *Non habet ingressum per disseisinam quam Rex fecit, sed habet ingressum per iudicium curie, &c.*

But at this day the Law is altered:

22.E.3.37. 23.E.3. Entry 11. If the King disseise one, and makes a Feoffment, the disseisee shall have a Writ of Entry, neither in the per nor in the post, *quam Dominus Rex fecit.* See the Book.

1.H.4.cap.8. It was doubted what remedy one shall have, but the Statute is, That if the King enter, and grant the Land of another, if the grantee enter, the Tenant shall have an Assise, and treble Damages against the grantee.

And by the same reason he may not agree to a disseisin done before, for till agreement the disseisor was Tenant, and nothing in the King, as 2.H.7.16. 15.E.4.15.

If you will say nothing but a Term passed, then in whom was it till I. S. was made King, in right of the woman, and that it shall remain no otherwise than a man that hath a Term in

the right of his Wife, and is made King, she shall have all her Inheritance, and all her Terms, no otherwise than if he were dead.

3 H 7. 14. The Queen and her Sisters were vouched as Heirs to E. the 4.

A Baron and Feme Alien, a Feoffment is made to the Feme, the Baron is made King, if upon office found, the King shall have the Land?

He shall not have it.

For the Baron being made King, she is made a Denizen by relation to the marriage, which was to prevent the relation of the office, no otherwise than H. 7. being made K. it had such relation, that it drowned all former Offences, Forfeitures, and Attainders whatsoever.

7.E.4.31. The King grants a Farm to the Bailly and Commonalty of S. they are made Farmers, and a Corporation. 2.H 7.

A Lord infeoffs his villein, hec hath the Land and his Freedom.

Grendons Case Commentaries, the King grants Land to a Corporation, this is a Grant, and a Licence in Mortmain.

Coke lib. 5. 15. Tenant for life grants a rent charge to him in the reversion, and his Heirs, who grants it to one, and his Heirs, this is a grant and a confirmation.

A disseisor makes a Lease for life, the remainder to the disseisee, the disseisee grants this

remainder over, this is a grant, and a confirmation.

A Parson makes a Lease to the Patron, who grants it over, this is an assignment, and a confirmation.

A Feoffment is made to Baron and Feme, the Baron is made King, if the Feme can waive.

1. Whether she can waive or not, as a Feme may after death of her Husband

2. In whom it shall vest.

3. How the release should work then.

4. Whether a Feme Convert disseisor can waive?

She may no otherwise than if the Baron were dead, for she shall have all her own Land, and all her own Leases, but not her Goods.

And it is not of necessity that she expect his death, for if a Feoffment be made to Baron and Feme, and they are divorced, the Feme may waive.

In whom it shall vest, Whether in the King or not, because in a sort here was a partition.

But the question will be upon the release, whether that shall relate to extinguish all the

right of the disseisee in all the Land, as if the Case were, disseisor makes a Feoffment to Baron and Feme, and I. S. the Baron, and I. S. make partition, the disseisee releases to I. S. this inures onely upon his possession for the half; the Baron dies, and the Feme waives, I. S. hath all by Surviour, yet shall not the release go to all?

Also by the waiver it cannot go to the King, for that were to make him a disseisor by the waiver, it cannot return to the Lessee, contrary to his Livery, nor to the Lessor, then will not this amount to an occupancy.

But in this Case the Queen cannot waive, but still in regard of the Lessor she remains a disseisor; for if a Feme Covert be a disseisor, and her Husband dye, she shall not waive the possession, for so for years and dayes she might take the profits, and yet in the end pay nothing, which were unjust. 41. E. 3. An Infant may be a disseisor, and cannot waive a descent.

It may be probably alleged, that she might waive, for being a Feme Covert, she may allege ignorance of the matter in fact, that is, whether her Feoffor had but an Estate for years, or was seised in Fee-simple, and we find in our Books, that great wrongs have been excused by the ignorance of a man in what wrong he did, and waiving the thing wrongfully taken, As,

22. Aff.

22. Aff. 85. *vid. lib. faux imprison. Heire son frere prise, per Scots.*

7.H.6.27. One brought an Action of Trespasse for taking his Swans; the Defendant pleaded that he was Lord of such a Mannor, and that in a River within his Mannor, hee found the Swans, and took them for strays; but after he had notice whose they were, hee waived the possession of them, and let them go; this was a good excuse both of the Trespasse and Damage.

21.H.6.14. One brings Trespasse, *Quare filium suum rapuit, &c.* He answered, you married my Sister, and had by her this Son, and you being out of the Country, it was reported you were dead; whereupon I, as next kin to your Son, seized him, but when I heard you were alive, I sent him home again to his nurse. Thus rightly did he waive, and avoid his wrong for want of true intelligence, which in Law we call Notice.

But in all those Cases, these wrongs were with intents to do right, and the parties were of opinion they were in the right; But our case is of a disseisor, which is alwayes intended a wrong-doer.

But you will say, this woman is no disseisor at Common aw, her entry was not *malum per se*, but *malum prohibitum*, a Statute disseisor, and she being a Feme Covert, is not bound by Statutes.

But

But I say she is bound by the Statute, for in all Statutes where a Feme Covert is not expressly excepted, she is bound, as the Statute of 13. H. 6. disseisin 1. *per Martin.* Baron and Feme may both be disseisors.

35. Aff. 5. Baron and Feme disseisors, assise against the Baron sole abated.

15. E. 4. 15 Disseisin is made to anothers use the disseisor is Tenant untill agreement.

21. E. 4. 53. Rent is issuing out of Land of the Wife, the Husband and Wife make a Recous, they are both disseisors.

That as I have argued the Lessor enters, his entry is congeable for a moyety, that is, the Queens part.

Tenant in tail makes a Feoffment to a Feme Covert without Licence, the Husband dyed the Feme waives.

Points upon the Statute.

1. **A**N Adventurer into *Virginia*, is not within the Statute, for although from time to time wee send trifles thither to exchange with the Savages; yet the main drift and cause of our Traffique thither, is for plantation and discovery, and not for Merchandizing. I hold the same of *Greenland*, but not of *Muscovia*.

2. He that is an Inn-keeper is within the Statute, for he buyes and sells again by retail. *Irelands Case in Smithfield.*

3. He was born in the Isle of *Man*, the Statute is born within her Majesties Dominions, or Denizen, and I should have made small question, but that one born within the Isle of *Man*, is born in her Majesties Dominions, if it were not for the Book of 11. H. 3. *Kell. fol. 202.* It was found by an Office, that the Earl of *Derby* dyed seised of the Isle of *Man*, the Countesse came and prayed to be endowed, to whom *Brudnell ex assensu Brook & Fitz-Herbert*, and all the Kings Counsel said, That the Office was void, because the Isle of *Man* is not parcel of the Realm, but the Isle of *Wight* is parcel of *Hamshire*, and *Wales* and *Ireland* are parcel of the Realm, for Writs of Error lye, &c.

Hollinshead And I think it is very true, that description the Isle of *Man* was then no parcel of *Britain*, of the Realm; for the first mention *fol. 16. b.* thereof in any Chronicles, is the same year that *England* was Conquered by the *Normans*; for when *Harold* had at *Stainford-Bridge* Conquered another *Harold* that was King of *Norway*, one *Goddard* the Kings Son of *Ireland*, fled to the Isle of *Man*, in time Conquered it, and made himself Lord and Landlord of all the Isle. So as to this day there

there is not a Free-holder in that Island, but all are Tenants to the King of that Country; It is about thirty miles long, and fifteen miles broad, it is not governed by any written Law or Courts of Record, but all their Controversies are ended by Arbitrators, whom they call Deemsters.

When King *John* Conquered *Ireland*, he sent Forces into *Man*, and wasted it all, but seated no Government there.

1240. One *Harold* of the *Norway* Line was received, and was invested in the Kingdom of *Man*, by the King of *Norway*, and yet afterwards he was made Knight by the King of *England*.

1250. Or thereabouts, in King *Edw. 1.* time, *Alexander* King of *Scots* having conquered all the Islands, either by strength, or for money, amongst the rest, brought the Isle of *Man* under his Dominion; the old Kings Daughter sued to *Edw. 1.* as to the Supream Head of *Scotland*, the Answer, *Sequatur coram Justiciariis de Banco Regis & fiat Justicia.*

Edw. 2. granted it to *Piers Gaveston*, but in *Anno 1393.* *William* of *Mountacute* by strength wone it from the *Scots*, as *Thomas* of *Walsingham* saith, and sold it to *William Scroop*, he was attainted, and so it came to *Hen. 4.* the King of *England* he granted it to *Henry Percy* to hold it, by carrying before the King *Lancaster*

caster Sword; but presently he was attainted, and the King granted it to Sir John Stanley, and so it came to the Earl of Derby.

Semans Case, 5. Reports.

A mans House is his Castle, and his Castle is his House.

Points upon the First Case.

1. **I**F Tenant for years may attorn before Entry.

21. H. 7. One makes a Lease for years, and before the Lessee enter, the Lessor releases to him, the release is void.

One bargains and sells his Land to another, and before the Deed is inrolled, he attornes to the grant of the reversion, and after the deed is inrolled, and the bargainee enters. 21. H. 7.

28. H. 3. *Dyer*, Debt for rent lies before entry of the Lessee.

Litt. Lord and Tenant, the Tenant makes a Lease for life, the Lord grants the Seigniorie to the Tenant for life in Fee, the Tenant ought to attorn, yet he shall not hold of the Tenant
for

for life, during his life.

28. H. 8. *Brook*. Tenant for twenty years, makes a Lease for ten years, Tenant for ten years attorns, it is good.

20. H. 6, 7. A Seigniorie is granted by Deed to one for life, the remainder in Fee, Tenant for life dyes before attornment, &c. contrary if it were by Fine.

11. H. 4. 18. One who hath nothing in the Land must attorn, as Tenant in Dower who hath assigned her Estate.

2. The reversion of Tenant in tail is granted, he commits Treason, and attorns, and is attainted.

12. E. 4. 3. Tenant in tail shall not be compelled to attorn, but 15. E. 4. 13. if he attorns voluntarily it is good.

Nor Tenant in tail, after possibility, &c. 46. E. 3. 13. 39. E. 3. 20. 3. H. 6. 12. 5. H. 5. Attornment 17. One makes a gift in tail rendering rent, the Donor by fine grants the rent, the Tenant in tail must attorn. 8. H. 5. 10. Tenant for life grants his Estate upon condition, the Lessor grants the reversion, Tenant for life attorns, and after performs the condition, yet the Attornment is void.

But all the question is upon the relation of the Office, and this shall not vacate the Attornment

tornment, for it shall not relate for the mean profits of the Land. Sir *William Fleetwood's Case, Cook, lib.8.* by the same reason, if rent were reserved, it were well paid, and well received, and sufficient to invest the reversion in the Grantee.

3. Adventurer to the *East Indies* is within the Statute.

4. Gardian of a Ship is within the Statute.

The Chancellor hath authority to award a Commission, but not to granter Supers: And therefore death of the King, or a new Commission leaving out the old Commission may be, but no Supers.

If the King present to a *Benefice* above 20 li. the Chancellor cannot make a revocation, but as well in our ase, as in that Case by Warrant under the Signet, Privy Seal, or Seal Manuall, the Chancellor may award Supers.

6. Denizen of *Ireland*.

Points

*Points upon the Third
Case.*

1. **T**enant for life, the remainder to the right Heir of I. S. makes a Feoffment in Fee upon condition, and enters for the condition broken, who shall enter for the Forfeiture.

The Feofer shall not enter, for all is out of him by the Feoffment, and hee hath nothing but a possibility.

The right Heir of I. S. shall not enter, for his remainder is destroyed.

The first Question is upon the Statute of *W. 2. cap. 25.* Whether if Lessee for years makes a Feoffment by Livery within the view, the Feoffor or Feoffee, or both of them, or neither, be disseisors.

2. Upon Baron and Feme, whether a Feoffment without Deed to the Baron and Feme, and Livery only to the Feme, invests any thing in the Husband.

3. Upon the matter, admit they are both Disseisors, whether the release made to the Husband

band shall exclude the Wife; it shall, but in this Case, where Tenant for years enfeoffes, 2. and the Lessor releases to one, he shall not hold out his Companion.

4. Baron and Feme are Joyn-Tenants of a term, and the Baron is made King; what is become of the term, and so of Freehold.

Whether the King shall have all, or the Queen all, or they remain Joyn-Tenants, or Tenants in Condition, they are Tenants in Common.

5. A Feme commits a Disseisin to the use of her and her Husband, and the Husband is made King, and the disseisee releases to the King, what is wrought, if he can agree to the Disseisin being King.

6. A Feme Covert Alien purchaseth, the Husband is made King, and Office is found.

7. A Feme Covert purchaseth, the Husband is made King, if he can waive.

Points upon the Statute.

1. **I**f one born in the Isle of *Man* is within the Statute?
 2. If Adventuring to *Virginia* is Merchandizing?
 3. If an Inn-keeper be within the Statute?
 4. If going to the Isle of *Man* be a Departing?
 5. If keeping of a Castle be a keeping of his House?
-

The Second Division.

Who shall be said a Subject born of this Realm, or of any of the late Queens Dominions, or Denizen.

1. **A**: and B. disseise C. (who in consideration that A. at his Request hath married

married B. being a poor Maid) releases to A. and his Heirs, to the use of B. and his Heirs females of his body; they have issue, a Son and a Daughter, B. dyes, the Daughter makes a Lease to C. for one and twenty years, rendring the ancient rent, and dyes, having issue E. a sole-Merchant, born upon the Coasts of *Flanders*, and is married to F. a Citizen of *London*, born in the Port of *Deep*, A. makes a Feoffment to F. who is outlawed for Debt.

The Feme is a Bankrupt within this Division, and the land shall be sold, but subject to the lease made to C.

2. One hath a House of Gavelkind, and purchases Estovers to this House, out of Land in Borough *English*, and dyes, having two elder Brothers, they make partition of the House, the younger is executed for Felony, the Lord enters into a moiety, the elder Brother born in *Virginia*, and using to give Gold for Silver, contrary to the Statute, and for that is condemned in 100 li. in an Action upon the Statute, at the sute of the Informer, and the King, and remains in execution at the Kings sute for six moneths, the Informer and I. S. a Creditor, sue forth a Commission.

The elder Brother is a Bankrupt within this

this Diviston, but no part of the land shall be sold by this Commission.

3. The Lessor when the King was absent in Scotland, enters upon the Lessee for life, and dyes seised, his Heir for money paid by a Merchant naturalized, makes a Feoffment to him and to a Feme sole an Alien, the Merchant and the Feme intermarrie, the Lessee and a Stranger make Livery by Letter of Attorney, the Baron is made Church-warden, and being non-solvent keeps the Church, Office is found.

The Baron is a Banckrupt within the Division, and all the land shall be sold.

4. White-Acre is given to A. and B. Baron and Feme, and to the Heirs of the Baron for the Joynture of the Feme, a Disseisor enters and levies a Fine to C. who marries D. an Alien, A. dyes, five years passe, D. is sole Merchant, and made Denizen upon condition, she shall not depart the Realm without her Husbands leave, B. brings Dower of Black-Acre, the Heir of A. enters into White-Acre, D. being non-solvent cloupes into Scotland, C. enters.

The Feme is a Bankrupt within the Statute, and White-Acre shall be sold.

5. A Tenant for life, and B. an Infant in reversion, born in *Greenland*, they levie a fine to C. B. uses his stock in the *Muscovia* Company, and reverses the fine, A. surrenders to the King by deed, B. being of full age, and indebted to the Company, procures himself to be arrested, and after he grants the reversion to the King by Deed inrolled, and after the first Deed is inrolled, the Company sues a Commission.

B. is a Bankrupt within the Statute, and the Commission is well awarded, and the land shall be sold.

6. A. and B. a Merchant-Stranger, enter upon C. the Heir of a Disseisor, B. is made Denizen for seven years, the Disseisee releases to A. who makes a Lease for years, rendring rent upon condition to re-enter for non payment, the Heir releases to B. the Land is extended for the Debt of A. B. is non-solvent, the Extendor enters for non-payment, B. keeps his House, seven years passe, office is found, A. dyes.

B. is a Bankrupt within this Division, and the land shall be sold subject to the lease, but not to the Extent.

7. A Lord hath the goods of Outlaws within his Mannor, and M. his Tenant who was born in *Gernsey*, is a Meal-man, and outlawed, and for redemption of his goods, enters into an Obligation to the Lord to pay 100 li. B. recovers 10 li. against him for Battery, the Lord leases to him a Wind-mill, M. reverses the Outlawry, and being in debt to a *Scotch-man*, an *Irish-man*, and a *Dutch-man* for Corn, before his day of payment ceases to be a Meal-man, and becomes a Miller, and being non-solvent, keeps himself in the Mill.

He is a Bankrupt within this Statute, but the Debts are not remedied by this Statute.

8. An Accountant to the King hath a Seignior, and dyes, his Son being a Merchant and born upon the River of *Canada*, releases to the Tenant all the services for the life of the Tenant, who dyes without Heir, a Stranger abates, the Son being non-solvent goes to *Barinudas*, a Commission is awarded for the King upon the Statute of 39. *Eliz. cap. 7.* and another Com-

Commission is upon the Statute of Bankrupts, the Commissioners for the King sell the Tenancy to A. the Commissioners of Bankrupts sell the Seignior to B.

The Son is a Bankrupt within the Statute, and B. shall recover the land against the abator by Writ of Escheat.

9. A. makes a Lease of years to B. a Merchant-Stranger, Denizen of Ireland, upon condition to have for life if he pay 10 li. at M. and to have in fee if he repair a High-way before Christmas, rendring rent upon condition to re-enter for non payment, the first condition is performed, B. being non-solvent returns to Ireland, and there staves in his House, the rent is due at the Feast of *All Saints*, and is demanded and arrear, B. performs the second condition.

B. is a Denizen within the intent of this Statute, but the King shall have the land during his life.

Upon the Second Division.

The Points of the First Case.

1. **I**F one may release to one, to the use of another?
2. Two Disseisors are, and they intermarry, and the Disseisor releases to the Husband, to the use of the Wife in tail, where the Fee-simple is?
3. If Marriage of a poor Maid be a good consideration to raise an use to the Maid, or to A?
4. Lands are given to a Feme Covert, and to her Heirs Females in tail, she takes Husband, hath issue a Son and a Daughter, if the Husband shall be Tenant by the Courtesie?
5. If the issue in tail in the life of Tenant by the Courtesie makes a present Lease, if this shall be good against the issue of the issue, after the death of Tenant by the Courtesie.

Points upon the Statute.

1. **I**f a Feme Covert sole Merchant be within the Statute?
2. If the Husband of such a Feme by her Bankrupting shall be also a Bankrupt?
3. If the Outlawry of the Husband for the Wives debt shall make the one, or the other, or both Bankrupts?
4. If the Lands or Goods of the Husband shall be sold for the debts of the Wife?
5. If the Inheritance of the Wife shall be sold?
6. If one born upon the Coasts of *Flanders* is born out, or within the Kings Dominions?
7. If one born in the Port of *Deep*, is born within the Kings Dominions?
8. If the Wife of an Alien sole Merchant be within the Statute?
9. If

9. If a Wife Alien, and the Husband *Eng-lish*, be within the Statute?

10. If the Estate of Tenant in tail a Bankrupt shall be sold?

11. If by Entry of the Commissioners and sale, the Vendee shall avoid a Lease which Tenant in tail a Bankrupt might have avoided?

1. If one may release to the use of another, or if an use can be raised upon a release; and it may for three reasons.

17. *Aff.* 2. 31. *Aff.* 32. } A Release may be upon condition, for there the case was put in *Libro*, and consequently to an use. But by 43. *Aff.* 12. the condition and the release ought to be both in one deed.

2. Secondly, it is a good proof, that a release to a Disseisor may be to an use, when a Disseisin may be to an use; as 34. *Aff.* 12. 37. *Aff.* 8. 1. *H.* 5. 4. 15. *E.* 4. 15. All is in the Disseisor until agreement; And 2. *H.* 7. 16. If one disseise another to the use of a third, the first is Tenant until agreement, but after, all is in him to whose use, although not to be punished for the force.

3. My

3. My third Argument is taken out of the Book of 17.E.3.5. where it is said, That if the Disfeisor take homage of the Disfeisor, he shall never have an Assise, for now they be Lord and Tenant, when at first the Disfeisor was in the poss, and destroyed the Disfeisees Estate, and held of the Lord Paramount: So I hold that if before the Statute of *Quia Emptores Terrarum*, the Disfeisor had released to the Disfeisor, the Disfeisor must have held of him, although it is true, that since that Statute, a release of all his right in the Land, releases his Seignior, as 34. Aff. But Temp. E. 1. Aff. 423. In a Writ of Entry in the Poss of a Disfeisin made by A. to the Demandants Grandfather, which A. infeoffed the Grand-father of the Tenant, the Tenant answered, after A. infeoffed my Grandfather, your Grandfather confirmed and released to my Grandfather, reserving homage, and my Grand-father did Homage to yours, and my Father to your Father, &c. But he relied upon the Deed, a Tenure was reserved upon the confirmation, in which case a release makes a degree; See my *Moot Book*, fol. 121: Then if an use may be raised out of the possession of a Disfeisor, if a condition out of a release, and a tenure out of a confirmation, by the same reasons an use may be raised, or declared by release.

2. Two Diffisors and they intermarry, it may seem they are mutually and respectively in by title, for if the Husband make a Feoffment of his moiety, yet he hath title to be Tenant by the Courtſie of her part, and ſhe hath title of Dower to his part after the Feoffment which is in ſeverance of the Joynture.

Kelloway Caſe, Incerti Temp. fol. 129. This Caſe is well debated, which was, A Feme ſole and A. Joynt-Tenants, ſhe marries B. A. releaſes to B. whether this ſhall inure to the Husband only, or to the Wife.

Reble ſaith, That it ſhall inure to the Baron ſole, for before marriage he might have infeoffed the Bar: and it is no reaſon that he ſhould be hindred to convey the Land to none but the Feme by releaſe, and by the releaſe he ſhall be Tenant in Common with himſelf in right of his Wife.

But by others the Law is contrary, for he might have infeoffed others as well as have releaſed to the Baron, alſo a releaſe to one ſhall be in many caſes to the benefit of another, as a Releafe to Tenant for life, &c.

9. *Eliz. Dyer 263.* This Caſe ſeems to make againſt me, Baron and Feme, and I. S. were Joynt.

Joynnt-Purchasers, I. S. released to the Baron, nothing went to the Wife; but I say, that cannot be, for the Baron and Feme being seised by intireties, the release could not make them hold the Land by severall moities.

16. H. 9. *Fitz-Herb.* Release 45. Nor do I agree that Case, for there the Case was, that a Woman was Tenant for life, and she takes Husband, the Lessor releaseth to the Husband and his Heirs, by Paston, he had the reversion, for the Free-hold of the Husband was in right of his Wife, and the release to him conjoyns that right, but I agree well that the Fee simple shall be in the Husband, &c.

19. H. 6. 35. One makes a Feoffment upon condition that he shall make a Feoffment over, if he doth it not, the Feoffor may enter; but if one makes a Feoffment in fee upon condition that the Feoffee shal make a gift in tail, and he doth it, the Feoffee, and not the Feoffor shall have the reversion: So here.

3. If marriage of a poor Maid be a good consideration to raise an use, it is good to carry the Fee simple to the Husband, and the intail to the Wife.

Before the Statute of *Quia Emptores Terrarum*, one might have created a Tenure in performance

formance of a charitable use, as to make or repair a Bridge, or to keep a Castle. 34. H. 8. Brook. p. 51.

6. E. 3. 13. One holds by 3d. to aide the Sheriff, and good, and another by 4d. of the Wapentake fine, and good, because for to discharge the publick contribution.

12. H. 7. 18. Keeping of a Beacon, whereby the Countrey may be warned when the Enemies come.

11. H. 7. 12. The same for finding a Chaplain chanting in such a place.

And by the same reason that a Tenure may be created, an use may, and the same consideration.

For before *Quia Emptores Terrarum*, If one had made a Feoffment in Fee without declaring an use, it was to the use of the Feoffee, for the Law created a Tenure which was a sufficient consideration; but after no use to the Feoffee, but to the Feoffor, if neither Tenure created, nor use declared, and for that a lease for life, or for years, or in tail is to the use of the Lessee, or Donee, for the Law will create a Tenure of him in reversion: So here is a good consideration to raise the use of the Fee to the Husband, and the Estate tail to the wife is good, without other consideration than that Tenant in tail must hold of him in reversion. 24. H. 8. Brook.

4. Lands are given to a Feme, and her Heirs Females, & she hath issue a Son and a Daughter, and dyes, if the Husband shall be Tenant by the Courtesie? He shall.

Cook lib. 8. Pains Case is reported, as if before that Case the Law had been doubtfull whether the Husband should be Tenant by the Courtesie, when the Wife Tenant in tail had issue which dyed, and so she dyed without issue.

For the Estate was determined, and this was the reason that Leases for life, or years are not good against the Lessor, for *Cessante Statu primitivo, &c.* yet one may be Tenant in Dower without issue, and therefore the Estate tail will continue to some purposes: 21. Edw. 3. Dower after a Dying seised without issue.

21. H. 3. Dower 198. Tenant by the courtesie may be, although the issue dye before the Wife.

16. E. 3. Aide 129. One may be Tenant by the Courtesie of the moiety of Gavelkind without issue by the custome there.

Reppes Case, The Child was ripped out of his Mothers belly, and so after the death of the Feme the Baron could not be Tenant by the Courtesie.

But this Question rises upon the Case put in *Pains Case*; Lands are given to a Feme and her Heirs males, and she hath issue a Daughter, and

and dyes, the Husband shall not be Tenant by the Courtesie; for although a man shall be Tenant by the Courtesie, notwithstanding the Estate tail be spent, yet his Estate must begin by an Heir heritable to the Estate. Here in our Case the Son was the Heir, and by him the Father would have been Tenant by the Courtesie to all other his Wifes Lauds, but not to this; But although a Female cannot be Heir that hath a Brother, yet since the Statute of *Donis*, and by the Equity of that, a Daughter may be Heir by *Cook*, in *Shelley's Case*, notwithstanding that he had also a Son, fol. 103. and so here he may be Tenant by the Courtesie for this Land by the Daughter, and of other Land by the Son, if the Wife had been Tenant in tail of other Lands to her, and her Heirs males.

5. Tenant by the Courtesie is, and Tenant in tail in reversion makes a lease to commence presently, hath issue and dyes, Tenant by the Courtesie dyes, if his issue shall avoid the Lease?

This Question is grounded upon the words of the Statute of 32. H. 8. which gives power to Tenant in tail to make Leases; Provided alwayes, that this Act, &c. shall not extend to any Leases to be made of any Mannors, &c. being in the hands of any Farmer or Farmers, by

verus.

vertue of any old Lease, unlesse the same old Lease be expired, surrendred or ended within one year after the making of the new Lease; and upon this clause hath risen many Questions; as Tenant in tail makes a Lease for 40. years not warranted, and 10. years after makes a Lease for 21. years to another warranted: within a year Tenant for 40. years surrenders, Tenant in Dower surrenders to the issue in tail upon condition, Tenant in tail makes a Lease, &c. Tenant in Dower enters for the condition, and dyes, and Tenant in tail dyes, if the issue may enter?

Tenant in tail makes a good Lease for one and twenty years, Tenant for years surrenders upon condition, Tenant in tail makes another Lease for one and twenty years, or three lives, the first Tenant in tail enters for the condition broken; By *Philips*, the second Lease is good; *Cook contra* in *Elmers Case lib. 5.*

And my Question is, whether Tenant by the Courtesie be within those words Farmers, &c. and he is not?

Forster in his Reading upon this Statute, vouched one *Richards Case*, That Tenant by the Courtesie was no such Farmer.

Points upon the Statute.

I. IF a Feme Covert sole Merchant, by the Custom of *London*, shall be within the first Branch, or Division of this Statute, which is, using the Trade of Merchandizing, or getting their living by, &c. she is.

That there is such a Custom in *London*, and mentioned, and allowed in our Books.

Custom Br. 43. Ley Br. 74.

1. E. 4 fol. 6. An Action being brought in C. B. for ones Board in *London*, he would wage his Law, not, and the difference put between Customes which goe with the Lands, as Gavelkind, Borough English, &c. and Customes of Courts, good within the Town, but not here, but a recovery by such Customes may well be pleaded here in this Case, *Littleton*.

Billing saith, A Feme Covert, sole Merchant, by the Customes of *London*, shall be impleaded sole here.

35. H. 6. fol. 28. The Question was, Whether the property of the Kings Jewells could be altered or forfeited, because they were pawned, and forfeited in *London*. By *Needham*, in the Exchequer-Chamber upon an Informacion: Customes Brook 5. and Pledge 28.

21. H. 7. 17. Departure, *Brook* 10. in case of a Departure, because he had intituled himself by a new matter, that is, by a Custome which he might have pleaded.

9. E. 4. 35. A Feme removed by *Habeas Corpus*, objected by *Pigot*, that shee and her Husband were both arrested for the Femes debt, because a sole merchant, and prayed that she might be remanded, for they have no remedy here, this had been allowed and granted to him, had not the woman come in charged with a reddidit, See upon an Exigent.

The Customs of *London* have been confirmed by Parliament, 1 E. 3. 7. R. 2. and admit that she could not be sole sued here, as in the Courts of *London*; yet if a Contract made by her shall bind the Husband by the Custome, the Husband shall be sued here, and it shall be said, the Contract of the Husband, as 21. H. 7.

2. The Husband shall bee bound by the Contract of his Wife if he command before, or agree after, and it shall be accounted his folly to suffer his Wife, and so they be both Bankrupts.

To put cases how the Husband shall be prejudiced by the Act of his Wife.

49.E.3.25. The Husband shall not be charged with the debt of the Wife which she owed before marriage after her death, but if an Action during the Coverture were brought against the Baron and Feme, and Judgement were had against them, and she dyes, the Husband shall be charged.

20.H.6.22. If the Wife buy any thing by the Husbonds commandement, or that by his allowance comes to his use, he shall be charged.

9.E.4.24. Debt against Baron and Feme, the Baron appeareth, the Feme makes default, the default of the Wife is the default of the Husband.

Nat. Brevium 120. G. A man shall be charged by the Contract of his Servant or his Wife, if he gives them Authority, otherwise not.

13. H. 7. 24. The Baron shall pay money to the Spirituall Court which was charged for corporall punishment of the Wife for a slander. And so it is at our Law for all slanders and Batteries, as we see every day.

20.H.7. *Kello* 61. A Feme Disseisor takes Husband, who occupies the Land without notice, or cognizance of the Husband, yet he shall pay damages. I conclude, her Merchandizes are his by the Common Law, and by the Custome.

3. For all the reasons afforesaid, the Outlawry of the Husband shall make him a Bankrupt by the Statute, and shall make the Wife a Bankrupt by the Custome, and the Statute.

Which is plain against all using Trade of Merchandizing, and getting their living by Buying and Selling, and that if he be non-solvent, as he must needs be by his Outlawry, then she must be non-solvent; But whether the Creditors by the Commission shall have the Goods, or the King by his Outlawry, That is a Question, that comes not within the compasse of this Case, but I shall move that some other time.

4. But I put the Husband to be dead before the Commission, and whether his Goods or Lands shall be sold afterwards is a Question, but not properly upon this Statute; for the death of a Bankrupt is not provided for by this Statute, but plainly by the Statute of *primo Jac.* the last clause; and I think that even for the debt of such a Wife, it shall be sold after his death: and although I put it, that a Feoffment is made to him by the Son, which cannot work by way of Livery, because he was Tenant in tail, yet if the Donor will enfeoffe the Donee by Deed, this will work to the

increasing of his Estate by way of confirmation. 7. H. 6

5. If the Inheritance of the Feme shall be sold?

She hath power to forfeit it by Attainder or by Cessavit; and by this Statute they may sell all the Bankrupts Lands lawfully, that by any lawfull course of Conveyance depart with all.

6. The Commission shall be in force against her after the death of her Husband, for if her husbands death shall not help his heir, a Fortior it shall not help her that lives.

Also, as the credit of the one, was the credit of the other; for who would trust a woman whose Husband was known to be of no credit; so the offence of the one, is the offence of the other; and the gains of the one, the gains of the other.

7. But if this man and woman be both Attainted, then neither of them are within this Statute, but another course must be taken with them, by the Statute of H. 8. cap.

The Woman was born upon the Coasts of Flanders; and the man in the Port of Devon.

and I hold them both born in the Kings Dominions; for him that was born in the Port (I mean in a Ship lying at that Port Town) there is small question, but it is within the Kings Dominions.

It is said of King *H. 2.* That he was the greatest King that ever was in *England*, for he had all the Land and Sea under his Dominion, from the *Orcades* to the *Pireneian Mountains*, which sever *France* and *Spain*. *England* and *Scotland* he had by the *Norman Conquest*, they and *Normandy* were laid together by *Hen. 1.* *Anjou Tourain* and *Main*, were the Inheritance of his Father, the first *Plantagenet*, *Poytiers* and *Aquitaine*, he had by his wite, *Britainie* held of him, as of his Dukedom of *Britainie*; so as all the Sea Coast, even from *Calis* to *St. Sebastians* in *Spain* was his; so that the *French* King had no way nor passage to the Sea, nor Jurisdiction in the Sea: It is true, that by the Attainder of King *John* for the murthering of Prince *Arthur*, a great part of all this was seized by the King of *France*, and in the end by *R. 2. H. 6.* and *Queen Mary*, all the Land was lost but the Sea was never lost, witness the *Isles of Alderney*, which stand within three miles of *France*, and *Gersey*, and *Garnsey*, whom the *French* to this day could never conquer, and yet they speak *French*, and indeed are all that is left to the King of *England*, that

was any part of the Dukedome of *Normandie*.

But the Coasts of *Flanders* is more doubtful, for *Flanders* was never in the Jurisdiction of the King of *England*, but yet they were never Masters of the Sea. The Lord Admirall Jurisdiction that he claims, is at this day as well of the *German Ocean*, as in the Straights and we say, the *Dutch-men* do us wrong in fish in these Seas.

8. But admit the Woman is an Alien, yet I take it, if her Husband be an *English-man* they shall be both Bankrupts within this Statute, he (as I said) by the Law, and she by Law and Custome; for as the Custome will allow her to be a sole Merchant if her husband be a Citizen (although she be an Alien) so likewise shall her estate be subject.

9. But if he be an Alien, yet all will be one for his goods, but his Lands are the Kings for if he will Trade and Traffique by his wife and her credit being *English*, and having Land and so have and enjoy the privileges and benefits of a Subject by his Wives legitimacion her Land, and the Custome of the City there it is no reason but that he should be subject to such Laws as other Subjects are.

So as if the Wife be an Alien, and the Husband

band a Subject, or the Husband an Alien, and the Wife a Subject, they are clearly in both cases within the Statute for Goods; but my Case is for Lands, and in my Case I hold them both born within the Kings Dominions.

10. But the greatest Question in my Case, and a thing never yet put in ure or questioned is, if a Bankrupt is Tenant in tail, if by the sale of the Commissioners the issue in tail shall be barred? they shall; for the words of this Statute, and of the Statute of 26. H. 8. all are one, The words of 26. are,

If any persons shall be attainted of any High Treason by course of the Common Laws, they shall forfeit to the Kings Majesty their Lands, Tenements and Hereditaments, wherein they have any estate of Inheritance.

Our Statute is, that the Commissioners by Deed enrolled may sell the offenders Lands, Tenements, and Hereditaments as well Free as Copy, &c. in either of these Statutes are intailed Lands mentioned.

But we see in *Walsingham's Case*, *Plowd.* and in *Dowghties Case*, in common experience, that an estate tail is forfeited, by 26. H. 8. 13.

But you will say in 26. H. 8. there be words more to carry it, than in your Statute; for that saith, any Estate of Inheritance, and an estate tail is an estate of Inheritance; but our Statute hath

hath words which *tant* amount, for ours is of all Lands, Tenements, and Hereditaments, which he or she may lawfully depart withall, and Tenant in tail may lawfully by fine cut off his issue.

And it is set down for Law, that a gift in tail, with condition, that the Donee shall not levie a fine, is unlawfull, a voyd, and repugnant condition; for it is said in *Mary Portingtons Case*, there be three incidents to estate tails, at the common Law, by Statutes, and by customs. By the Statute of 32. *H. 8. cap. 28.* to levie fines, and no condition can take away that from an estate that is incident to the estate, as it is pur of Dower, Tenant by the courtesie.

11. The last is upon my conclusion, admit that the issue in tail could avoid the Lease, whether the Vendee hath the same privilege?

If Tenant in tail make a Lease not warranted, and dyes, and the issue levy a fine before entry, 33. *H. 8.*

Dier. The Conizee shall not avoyd the Lease.

8. *E. 3. p. 22.* The same is if he accept the rent, or confirme the Lease before entry. The Lord *Bedford's Case*, *Cook lib. 7.* The Kings Garden shall avoid.

The King hath the Temporalities of a Bishop.

shop, he shall avoid, and all this is for the benefit of the Heir, or Successor; and so in our case it is for the benefit of the Bankrupt, for in the end they must account with him, and he will say, that by their means he ought not to lose his election and benefit of the Lease.

The first Case of the second Division.

A. and B. Disseise C. (who in consideration that A. at his request had married a poor Maid) releases to A. and his Heirs, to the use of B. and his Heirs Females of his body; they have issue a Son and a Daughter, B. dyes, the Daughter makes a Lease to M. for one and twenty years, rendring the ancient rent, and dyes, having issue E. a sole Merchant born upon the coasts of *Flanders*, and married to F. a citizen of *London* born in the Port of *Deep*, A. grants the reversion to F. who is outlawed for the debt of his Wife, and A dyes, M. enters.

The Wife is a Bankrupt, and the Land shall be sold charged with the Lease to M.

*Points upon the second Case of the
second Division.*

1. **T**ENANT in Gavelkind of a House purchases estovers out of Land, in Borough *English*, to be spent in the House; he dyes, his Brother makes partition, if the Estovers shall descend all to the younger, or all to the elder, or shall be divided, or if by the division of the Land they are extinct?

2. Two Brothers in Gavelkind, the one is executed for Felony, if the custome, the Father to the Bough, &c. holdeth place between Brothers, as between the Father and the Son?

3. If one born in *Virginia* is a Subject born?

4. If the exchanging of Gold for Silver, which is an unlawfull act, is buying and selling within the Statute?

5. If a Debt recovered by Information by an Informer, makes the Informer to be a Creditor?

6. If remaining in Execution six moneths at the sute of the King, makes him a Bankrupt?

Upon

Upon the third Case.

1. **A** Feoffment to two, and they intermarry, the Livery is made, if the marriage interrupts the Livery?

2. If the Lessee is remitted when he enters only to make Livery?

3. A Feoffment to B. and a Feme an Alien, how they shall take, and what part the King shall have?

4. If one naturalized is within the Statute?

5. If a Church-Warden a Bankrupt keeps the Church, if that be a keeping of his House, or taking Sanctuary within this Statute?

The Third Division.

1. **W**hat shall be said a Departing of the Realm.

2. A beginning to keep his House.

3. An

3. An absenting himself.
4. Taking of Sanctuary.
5. A suffering himself willingly to be Arrested.
6. A suffering himself to be Outlawed.
7. A yeelding himself to prison.
8. A departing from his Dwelling House.

A Grantee of a next avoidance presents by parol to a Benefice of 5 *li.* value *per annum* he is instituted, B. a Merchant and Farmer in Ireland, and indebted, by agreement with the Grantor, and the ordinary payes 10 *li.* to the poor, and is made a Minister, and presents A. dyes, B. is instituted and inducted, and after is inducted to another Benefice, and covers gleab to the first of 20 *li.* value *per annum*, he renders himself to the prison of the Admirall for Trespass in Ireland, the Parishioners detain their Tythes, the Grantee presents to the first Benefice, and his Clerk is instituted.

The Incumbent is a Bankrupt within the Division, and the Assignee of the Commission

missioners shall have Debt upon the Statute for the Tythes, and the Farm in Ireland.

3. Points upon the Statute of 31 Eliz. cap. 6.

1. **I**F a presentation in consideration that the presentee gave money to the poor, is Simony.

2. If the ordinary make a Minister in consideration that he gave money to the poor, makes the Benefice void immediately after his Induction.

3. If the Parishioners may refuse to pay their Tythes to a Simonist.

One Point upon the Statute of 21. H. 8. cap. 13. of particulars.

ONe hath a Benefice of 5 *li.* value, accepts a Benefice of 10 *li.* value, and afterwards recovers Land, to the first of 20 *li.* value *per annum*, whether this makes the first void by the Statute?

Three

Three Points at Common Law.

1. **I**F a Presentation by parol be good.

2. One hath the next avoidance, and presents, and his Clerk is instituted, and dyes before induction, if his turn be served.

3. One Presents, and his Clerk is instituted, and before induction, another presents, the first Presentee dyes, the second is instituted, if good.

Points upon the Statute de Banck.

1. **I**F a Merchant turn Priest, and then become *non solvent* of his former debt be a Banckrupt within these words, *Using or exercising the Trade of Merchandizes?*

2. Whether lying in prison in the Admirals Court, for a Cause whereof they have no Jurisdiction, be a yeelding of himself to prison, and if they have Jurisdiction?

3. *Whc.*

3. Whether Creditors of *Ireland* may sue here, that is, whether a man may be Banckrupt here for debts in *Ireland*.

4. Whether debts given by Statute for tythes be liable to his debts. A Statute giving an Action of debt, this debt may be transferred.

5. Whether Goods in *Ireland* may be sold by Commissioners here.

1. Grantee of a next avoidance presents A. by parol, to a Benefice of 5 *li.* value, and the Clerk is instituted.

The reason as it seems why one cannot present by parol is, *quia* (as *Linwood* saith) *Laicus potest variare*, and then if he name one, one day, &c. *dis. qt. Clericus & laicus presentat.*

Again, it may be said, that it is an Authority given to the Ordinary, and Authority ought to be by Writing, and so all things not manurable, as to be Attorney grt. of Rents, Advowsons and Reversions.

But to this the Divines say, they receive the Authority from the Patent, but as they doe confesse that for Tythes, Testaments and Marriages, they had of the gift of the Laity; so the Lay-men have the nomination, &c. from them, for before Churches were indowed with Lands, &c.

G

But

But I intend this no question; our Books are direct, that an Infant may present. So is

8. E. 2. *Fitz. pref.* 10. If Gardian by nurture present, it must be in the Infants name.

27. E. 3. *fol.* 89. The reason is, for he shall be Gardian of nothing but for that which he may account.

26. H. 6. *Grts.* 12. One may present by a Letter Missive.

19. E. 3. *qua. imp.* 60. For direct authority by *Husey, quod suit concess.* the King may present by parol.

But Merchant of *Ireland*, and indebted agrees with Patron, and Ordinary, that for 10*l.* given to the poor, the one shall present him, and the other make him Minister; and here rises two of my Questions upon this Statute of 31. *Eliz.*

The Statute names not Simony, but saith, If any for money, gift, reward, or profit, directly or indirectly, &c. whether giving 10 *li.* to the poor to be presented be Simony.

2. *M. Justice D.* & others that have read here before me do varie, all agree, that to do charitable acts, as to build a Bridge, marry a poor Maid, preach three times a week, to teach a School, is Simony. But to give to the poor some say it is not, for *Bona ecclesie sunt patrimonium pauperum*, the Apostles distributed com-

*munes distributiones, & quotidianas distributio-
nes, at Lincoln to this day.*

Linwood Sacrilege.

But I hold it is, for as in our Case, if he pay it before hand, it goes out of his own purse, if afterwards, though it go out of his Benefice, yet it is to be intended this is benefit to the Patron, for since the Statute of 39. *Eliz. cap. 3.* made for the relief of the Poor, the more the parson gives, the less the Patron needs give, and Charity ought to be voluntary, and not for hope of a Benefice, or a Reward.

But I will agree, that if it had been in consideration, that he shall maintain the Patron, if he be at any time in want during his life, this is no Simony.

Linwood } *Patronum faciunt dos, edificatio, fun-*
 } *us,*
fol. 157. } *Patrono debentur, honos, onus, emolu-*
 } *mentum.*

*De beneficiis, est & onus alendi Patron. Ec-
clesie ubi ad summam pervenit paupertatem, Er-
go, &c.*

But this is likewise given to the poor, to the end that he may be made Minister.

Whether this be Simony? I think this is Si-
mony in the highest degree; and the very same
which *Simon Magus* would have committed,

for he offered the Apostles mony to be admitted into the Ministry, he knew and saw, that they received nothing to their own private use, all things were common with them, and as I said, they distributed to every man as he had need; yet you all know how he was answered, and what became on him, even *eo quod voluit*, and yet *non potuit quod voluit facere malum*.

But the Statute is for gift, reward, or benefit to the Ordinary or any Friend of his, and so thought to be Simony in Spirituall Law, yet it is not within the Statute; yes indeed it is, for even as they say, *Si quis aliquid dederit alio quā presentandi aut ordinatori si alias beneficium non esset habiturus est Simony*. But then saith the Statute, if such a Minister be to be presented, instituted, and inducted into any Benefice for seven years after, that immediatly after the induction, the Benefice shall be void, and it shall be lawfull to the Patron to present another.

But here is the Question upon this Statute, by the first branch the King is intituled, by the second, the Patron, but the Kings interest makes it no induction at all.

A. dies, and B. is instituted and inducted.

4. But admit here is no Simony in the Case, then riseth another Question, Whether here
be

be any good presentation or not? where the Case is no more but this, one presents, and his Clark is instituted, one other presents, the first Clark after institution, and before induction dies, whether this presentation when another was instituted, be good at all? or whether his death before induction have made it good, whereby the second may be instituted, and inducted?

It is plain, if one present in the life time of the incumbent, the presentment is void.

22. H. 6. 27. By admission, and institution one is parson before induction, and *Linwood* saith, he hath *jus ad rem*, & *in re*. But 5. *Eliz. Dyer*, he hath *jus ad rem*, but not *in re*, And *Hare*, and *Buckleys Case*, he is like a Tenant in Dower, that hath Judgement, but no Execution. Or like a Coppy-holder after a Surrender, and before admittance, but neither to charge, nor bring action. But as in my Lord *Digbys Case* in *Coke l. 4.* A parson having one Benefice, is instituted into another, and then gets a dispensation, and then is inducted, the induction shall so relate that the dispensation is of no force. So his death shall make that he had by the institution no interest at all, but that the second presentation is good, and consequently the induction; But if in the life time of *A. B.* had been both presented, and instituted; the institution had

been meerly void, and then the induction could never be good, 13 *Ja. B. R.* if it be not in the Kings Case.

5. Afterwards *B.* being inducted into the benefice of 5 l. value is inducted into another, and then recovers Lands of 20 l. value to the first, whether this first be void by the Statute, 21 *H. 8.* and I take it, it is not.

The Statute is, that having a benefice of 8 l. accepts of another, and is inducted into the same, then the former benefice shall immediately be adjudged to be void. And although I am of opinion, that this Law shall be taken strict, and even extended by equity, because it is to repress a great inconvenience in the Church, and Common-wealth, That yet nevertheless this word, having, shall be construed, as it is in the Statute of 32. of Wills in *Buriler, & Bakers Case*, *pro ut the Case*, so here : And here is also this word immediately, which is much inforced there, because the Land could not descend immediately till disagreement.

A man incoffs a feme covert, and then grants rent charge, the husband dies, she waives, if she had agreed, it would have avoyded the charge, and yet the disagreement shall not make it good.

But I cannot compare it to a better Case than

than the Case of a Ward, the rule is, If tenant in Knights service dye seised, his heir within age shall be in Ward, with this addition to the rule, that if he were disseised and might enter, or if he had made a feoffment upon condition, and the condition were broken, if the Lord, or the Heir enter, he shall be in Ward; Or if the tenant for term of life of a Ward make a feoffment, and the Heir enter, the Land shall be in Ward. So be the Books of 17. aff. 18. aff. 18, 19 E. 3. *Gard* 114. & 48 E. 3. fo. 8. But 12 H. 7. 20, *Frowick*, if the Heir recover by action Auncestell, he shall not be in Ward.

15 E. 4. 13. *Urfwick* chief Baron the same, or if he pay money to redeem Land, and enter for the condition performed, he shall not be in Ward, so here I hold the same rule, If B. had been disseised of parcell of his Gleab, or that it had been forfeited for a condition broken, the first benefice would have been void, but not in this Case, I hold, that if his Rectory were a Signiorie, and but of 5 l. value, and then he accept a 2 benefice, and afterwards by the escheat of a teancie it had come to be of 8 l. or 10 l. value, it shall not in this Case be void.

6. But this Clark was a Marchant, and turns Priest, and now leaves his old debts unpaid, whether he can be a Banckrupt, because of

the words, using the Trade, &c.

He is ruled in *John Quarles Case*; my Lord Chief Justice being Recorder, was a Commissioner, for he left his Marchandizing, and was turned gentleman.

7. Whether yeelding of himself to prison in the Admirals Court in an action, whereof their Court hath no Jurisdiction, be a yeelding himself to prison, within the Statute.

The Admiralls Jurisdiction is limited by the Statute of 13 R. 2. cap. 5. that they shall not meddle with things done within the Realm, *scil.* this Realm. 15 R. 2. cap. 3. *de south les points*, 2 H. 4. cap. 11. gives an action, and double damages.

There was a Case in the Common Pleas;

I take it, the Admirall hath no Jurisdiction to hold Plea of a thing done upon the Land in *Ireland*, for he is Admirall both of *England*, and *Ireland*; so the King hath his Justices there for to give justice for trespasses and offences there done, first for that these Statutes are in force in *Ireland*, as all other are, which were made before 1 H. 7. And a Prohibition will lie here in the Kings Bench, if they hold Plea of a thing, whereof they have no jurisdiction, although they cannot hold Plea thereof themselves, As we see in the *Orphans Case* in *Case li. 5.* and these Courts ought to respect them

them of *Ireland* as subordinate to them for 34. Assises. Errors here upon a Judgement there.

31 H. 8. Bro. Prohibition 17. A Prohibition lies against the Admirall, when he supposeth a thing to be done upon the Sea which was done upon the Land.

8 The Parishioners detain their Tythes.

The question is, A man is presented by *Simony*, the statute is, the presentation, the institution, and induction are all void. But it is to give title to the King to present. But to the parishioner he is *dominus pro tempore*, as if he had been meer *laicus*; yet Sacraments ministered by him are of force.

The Church, and the Minister are compared to the Husband, and Wife; A woman is married to one Husband, and in *facie Ecclesie* she is afterwards married to another, as the Priest is actually in *facie* of the Country inducted, 17. Ass. 32. H. 6. A Feme with her second husband, levy Fine, none can avoid this Fine, but the right Husband, no more can any displace the Simonist, but the King.

And a Prohibition hath been awarded against a parson supposing he was a Simonist, and upon advice, and consultation the parson closes, *B. ver. Pomery* in the Exchequer, another presented by the King, and yet all one for the mean profits.

9. The grantee presents to the first benefice question, whether I grant one *Primam & ad-vocationem proximam* & he presents, and his Clark is instituted, and dies before induction, whether his turn be served? It is, 38 E.3. 366. *vide lib.*

10. That Commissioners here may sell a Banckrupts goods in *Ireland*, and Irish men may sue the Commission.

11. The first is within the expresse words of the Law, *scil.* being also a Subject born.

The second is proved by the Case of the Merchants of *Waterford*; 2 R. 3. 11. An Act of Parliament in *England* shall not bind men of *Ireland* for their Lands, but for things transitory it shall, as the Case was there for shipping of *Woolles* from *Waterford*, to carry to other places then *Callis*.

Also a man attainted here of Felony, or Treason, shall lose his Lands in *Ireland*. My Lord of *Essex*, *Ororkes* Case.

12. An action of debt upon the Statute by the Statute of *primo Jac.* which gives not only all things in Action, but also gives an Action to the Assignee in his own name, but he must declare specially.

1. *A.* makes a Lease of a Rectory to the King for another mans life, and grants the reversion to *B.* a Merchant to the use of *B.* and *C.* the King grants his estate to *D.* *E.* enters, and marries with the Merchant, *C.* dyes, *D.* releases to *B.* who being *non solvent* keeps his house, the Tithes are sequestred for not repairing of the Quier, the Creditors grant a letter of licence to *B.* for six months, *E.* dies, *D.* enters, he for whose life dies, *B.* renders himself to Prison for a Fine assessed before the High Commissioners, six moneths passe.

B. Is a Banckrupt. within this division, and the moiety of the Rectory shall be sold, and all the goods sequestred.

1. The King tenant *pur autre vie*, the lessor grants the reversion, it good without Attornment; It is good.

2. A grant to *B.* to the use of him and *C.* if they are Jointenants, or Tenants in Common; They are Tenants in Common.

3. Tenant for life is disseised by a Feme sole, she marries him in the reversion, the disseisee releases to the Husband, it is good to extinguish his right.

4. What

4. What is wrought by the occupancy: nothing.

1. If a Bankrupt procures a letter of licence for six months, and within the time is a Bankrupt again, if he shall be a Bankrupt *ab initio*: He shall be.

2. If Imprisonment by the High Commissioners is within the Statute: It is.

3. If the goods of a Bankrupt sequestered shall be sold: They shall.

2. *A.* devises 20 l. to *B.* and *C.* and 200 Acres of Land to *D.* and *E.* his Executors, *D.* proves the Will, *E.* waists the assets, and dies, *D.* a Merchant makes a Feoffment of 99 Acres to *F.* *D.* is *non solvent*, and outlawed in Ireland, *B.* and *C.* joyn with the Creditors in suing a Commission.

D. Is a Bankrupt within the Division, and 101 Acres shall be sold, and *B.* and *C.* shall be relieved.

3. Tenant of the King makes a gift in tail, and dies, having issue two daughters within age, the donee makes a Feoffment to Coparceners, office is found, and the Land being seized

sed for the King, he grants it to *H.* a Merchant, as long as it shall be in our hands, *H.* marries the younger, and is *non solvent*, and suffers himself to be arrested, at the sute of a Son born, the other daughter dies, *H.* confesseth the action, and is imprisoned in execution for the dammages, the Commissioners sell the Interest of *H.* All this is found by another office.

H. Is a Bankrupt within the Division, and the Vendee shall have an ouster le main.

1. Discontinuee makes a Feoffment to issues in tail within age, if they are remitted, for they are not Tenants in Common, but Jointenants.

2. Tenant of the King makes a gift in tail, and dies, his Heir within age, the discontinuee infeoffs the infant, if he shall be in Ward, because a purchaser notwithstanding the Remitter.

3. Tenant in tail discontinues hath issue a daughter within age, and his wife with child with a Son, and dies, the discontinuee infeoffs the daughter, the Son is born, if he shall have the benefit of Remitter.

4. If

4. If the Interest of the King by an office, shall be devested by another office without Petition, or monstrance *de droit*.

5. If a Merchant being a discontinuée confess an action of trespass, at the sute of the issue in tail, and is taken in execution, if it make him a Bankrupt.

4. Grantee of a next avoidance presents *A.* by paroll to a Benefice of 5 l. value *per annum*, he is Instituted, *B.* a Merchant and Farmer in Ireland, and Indebted there by agreement with the Grantor, payes 10 l. to the poor to be made a Minister, and to be presented, *A.* dies, *B.* is Instituted and Inducted, and after that, is Inducted to another Benefice, and recovers Glebe to the first of 20 l. value *per annum*, and after he is *non solvent*, and renders himself a Prisoner to the Admirall for a trespass in Ireland, the Parishioners detain their Tithes.

B. Is a Bankrupt within this Division, and the Assignee of the Commissioners shall have debt for the Tithes, and the farm in Ireland.

5. Tenant in tail is attainted of Treason, and pardoned, the King grants and restores to him the Land in tail, the Donor Releases, tenant in tail

tail suffers a recovery to the use of B. a Merchant, and hath issue, and dies, the release is Inrolled, B. is made Steward of the Tower of London, the issue in tail enters B. is *non solvent*, and keeps himself in the Tower.

B. Is a Bankrupt within this Division, and the Commissioners shall sell the Land.

1. If the gift is within the Statute of 34 H.8. cap. 20.

2. If the reversion be good to the King without Inrollment.

3. If the Inrollment shall Relate.

4. If the Tower is comprehended within the Statute, or the Equity *re vera*.

6. A. Feme sole tenant in tail makes a Lease for 30. years to B. a Merchant indebted to C. and D. she marries E. hath issue F. A. and E. levy a Fine to G. which is reversed for nonage of the wife, B. lies in prison for six moneths, in execution for the debt of C. and in that time becomes Indebted to the Gaoler for victuals, the wife dies, E. enters claiming as tenant by the Curtesie, and surrenders to the issue, D. assigns his debt to the King, a Commission is awarded, all this is found by writ of

of Prerogative, and that B. had nothing.

B. Is a Bankrupt within the Statute, but the King shall have the Term, and neither C. nor D. shall be relieved.

9. Tenant in tail makes a Lease for 30. yeares, and enters into religion, the issue accepts the rent, and dies having issue, the Father is deraigned, the Lessee being a Merchant at Constantinople, becomes Indebted to English Merchants there, and turns Turk, the Father dies, the issue of the issue enters.

The Lessee is a Bankrupt within this Division, and the Term shall be sold.

Cases upon the fourth Division.

What Lands, Tenements, or Hereditaments of a Bankrupt the Commissioners may sell.

THe King grants the Manor of S. to A. and his Heirs, to be holden by the service, to be a Justice of Peace within the Manor, A. Bargains & sels to B. and C. his wife, and to D. and after A. grants the services to I. S. a Tenant to B. B. and C. are divorced *causa*
Pre-

Pracontractus of C. with I. S. D. is a Bankrupt, a Commission is awarded, I. S. attorns, D. enters, and manumits a villain, D. is imprisoned in his house the and is *felo de se*, his Heir within age enters, I. S. dies without Heir, B. and C. intermarry, the deed is inrolled, office is found.

The Commissioners may sell all the Land, and the goods of the Bankrupt except the Villain.

1. The King grants Land to be holden by the service to be a Justice of Peace, what Tenure this is.

2. A Bargain and Sale to Baron and Feme and a stranger, and the Baron and Feme are divorced before Inrollment, how they shall take.

3. One sells a Manor, and before Inrollment the bargainor grants the services of I. S. to one of the vendees, and he attorns, if the Inrollment shall be good for the rest to others.

4. Bargainee of Land holden in *Capite*, enters, and dies before Inrollment, if his Heir within age shall be in Ward.

Upon the Statute.

1. **A** Bankrupt hath a Seignior, a Commission is awarded, the Bankrupt dies, a Tenancy Escheats, if the Seignior, or the Tenancy shall be sold.

2. Tenant in *Capite* is a Bankrupt, and dies his Heir within age, and in Ward, if the Land can be sold.

3. A Bankrupt hath a villain, and manumits him, if the Commissioners can after sell him.

4. A Bankrupt is *felo de se*, if the goods shall be sold notwithstanding the interest of the Almoner.

The King grants a Manor to A. to be holden by the service, to be a Justice of Peace within the Manor, the Question is, what Tenure that is, if grand serjeanty, Petit serjeanty, Tenure by Knights service in Capite, or Tenure by Soccage in Capite.

Neither at the Common Law, nor at any time

time before the Statute of *Quia Emptores terrarum*, there was no officer in this Commonwealth, called by the name of a Justice of Peace, And therefore there can be no Authority of any Ancient tenure of that nature; But there were divers Officers, who by vertue of their Offices, and as incident to their office, were Conservators of the Peace, as Sheriffs, Coroners, Constables, and all the Justices of the Kings Bench.

17. aff. 5. A Sheriff, or Coroner may take an Appeal, a *fortiori* in the Kings Bench, for there Scot saith, that they are the Sovereign Coroners of the Land. But till 18 E. 3. cap. 2. the name of a Justice of Peace was not known.

But whether such a tenure may be created at this day, is a Question, and I think it may, For the King is not bound by the Statute of *Quia Emptor*. as it is plain by the Books of Com. 240. Bark. Case.

He at this day may create new tenures; And Marrow in his Book of a Justice of Peace, saith, That if the King grant a man Land to be holden by being a Conservator of the Peace, he is a Conservator by tenure, But he doth not determine what Tenure it is Mr. Lambert vouches a Record at Chester, that one *Urianus de Sancto Petro* that held *medietatem serjancie pacis*, and this, he calls it Tenure *in Capite*, but rather as an Executioner, than as a Judge, It is

thus materiall to the end of the Case, what Tenure this is, that if it be Knights service, then here's a Wardship, and then it will be a question whether the Kings interest will prevent the authority of the Commissioners; if in Soccage in *capite*, then that point is cleared. Some would have this to be grand Serjanty, because: it is to be performed in person, and that person is to represent the Kings person, and if (by *Littleton*) it be grand Serjantie to be a Chamberlain of the *Exchequer*, who is but a Keeper (as it were) of the Kings money, it is grand Serjantie much more to be a Keeper of the Kings peace: Others would have it Soccage in *Capite*, for it is a Tenure must go with the Land, and so to a person uncapable of the Office (as in this case) to an Infant, or to a Woman, who cannot be a Justice of Peace. And this is an Office, which cannot be transferred, no more than as it is in *Kel-loway* in his cases *incerti temporis*, fol. 151. If the Office of a Sherif, or Coroner be granted to one it cannot bee granted over, For such an officer ought immediatly to attend on the King without any mean, for the office of a Sherifs as Sir. *John Davies* saith well, &c. for life, & I am of opinion, that if this grant had been made before *primo* of E. 3. it had been a tenure by grand Serjanty, for then the Tenant could not alien without license upon pain of forfeiture. But now it is otherwise, so as I am of opinion, that

this

this grant being now made, and in fee, it was a tenure by *grand Serjancy* for life in the first patentee, and his patent was his Commission; But when he doth alien or die it will be a soccage in *Capite*; And yet if it should turn to be a tenure by Knights service in *Capite*, yet I shall maintain the case at latter end, that the Commissioners may sell the land, notwithstanding that the heir of the Banck is within age, & inward.

2. A Bargain and Sale to Baron and Feme & a stranger, & before inrollment, they are divorced, the Question is, how they shall take, as three severall Jointenants, or each shall have a third part, or whether the husband & wife shall be jointenants for either of them a quarter part, and the stranger a jointenant with them for a half part.

35. Ass. 15. It is plain, that if one make a feofment to the husband, and wife, and a third person, the husband and wife, as one person, take the one Moiety, and th' other person the other Moiety, vide *Librum. 7. H. 4. fol. 17.* That they that bee devorced, the divorce will change, and alter their estates, As if Lands be given in tayl speciall to an husband and wife, and then they are divorced, the estate tayl is turned to a freehold, and they are made jointenants, by divideable Moieties whereas before they held by intireties, & yet if they marry afterwards again they are Tenants in tayl again.

3. 39. H. 6. 43. The difference is taken between a feoffment before coverture, and after, for if it be before, and then they intermarry, if the husband alien all and dye, the feme shall have a *Cui in vita* but for a Moity, contrary if it be after marriage: *Copledikes* case r. rep. Baron and Feme jointenants, the Baron suffers a recovery of all, and dyes, it shall be good for nothing against the wife.

But there have been many Questions raised, how they shall take when a Conveyance is commenced before coverture, & finished after, Or as our Case is when the Conveyance is commenced during Coverture, and finished after divorce: As if a reversion bee granted to a Man, and Feme sole, and they intermarry, and the tenant attorns, they shall take by entirities, because by the Booke of 48. E. 3. The Attornement shall not relate: And yet if a feofment of a Manor bee made to a man and feme sole, and they intermarry, and then the tenants attorn, they shall bee in of the whole Manor by Moieties, because in that case the Attornement will relate, as it is proved by *Longes* Case which was Pa. 31. Eliz. Rot. 2024. One made a feofment of a manor to which an *Advowson* was appendent, the Church became voyde, and the Tenants attorned, it was adjudged that in this case the Attornement should relate, and that the feoffee

not

not the feofor should present.

But in our Case, here be two relations together, the relation of the divorce, and the relation of the inrollment. I have shewed, that the relation of the divorce shall change their estates, and the relation of the inrollment, will give it them, as they were to take at the tyme of the enscaling of the Indent. 6. E. 6. Bro. 6. E. 6. 2 Jointenants, and one Bargaines & sels all the Land, and before inrollement, the other dies; yet no more shall passe than the party had at the tyme of th'enscaling of the Deed. Surely the Deed relates to make them in by intireties, and the divorce to make them jointenants, But shall this relation of the divorce change, or alter the estate of the third person. And I take it, this nothing at all concerns the Stranger, nor shall it alter his estate, But it shall bee as a matter of estoppel binding the Baron and Feme, but not to bee respected of estrangers, and this is proved by the writ of *Cui Ante divorcium*, for there the feofment of the husband stood as a discontinuance till it was defeated:

Lex non oberit tertio extraneo, prodesse alteri nemo tenetur, sed obesse vetatur.

48 E. 3. 38. Tenant for life, the remainder for life, the remainder in fee, the first tenant for life makes waste, he in remainder in fee releases to him in remainder for life, this shall
not

not make him who was the first tenant for life, to be punishable in Waste.

43. E. 3. 17. An appeal is brought against 2. as Principals, and an exigent is awarded, now the King is interested in their goods, they appear, the plantif declares against one of them as principall, and against the other as accessary, the 2. desires to have restitution of his goods, hee shall not, For alteration of the plaint by and between the plaintif and defendant, shall not by relation of any matter *ex post facto* prejudice the King or a third parties interest.

But before this divorce A grants the services to I. S. a tenant to B. the husband, here arise 3. Questions at once.

1. If one bargain to two, and afterwards levies a fine or feofment to one of them, Whether it be not such a disagreement to the former Contract, as by that bargain the other shall have all, and the feoffe nothing; And I think the other shall have all, and feoffe or conizee nothing.

2. Whether if one bargain for a Manor, and before inrollment the bargainor grants by fine or feofment parcell of the Manor, to the vendee, whether this destroys not the bargain for all? It doth.

3. There is Husband and wife, and the husband

husband purchases by bargain and sale to him and his wife, and their heires, and before inrollment, the husband takes a fine, or a feofment of all, and then the Deed is inrolled; What shall the wife have? I think she shall have nothing. For the first, & for all these questions, we must agree upon this ground which is set down in *Hinds Ca. Coke li. 4.* That if a man buy Landes by bargain and sale, and before inrollment he accepts of a fine, or a feofment, he is in by the fine, and the inrollment is of no force.

The next rule is, That if Lands bee conveyed to Two, and the one will disagree in Court of Record, or disclaim in the tenancy, all invests in the other.

17. E. 3. fo. 6. a. *Placito* 18. A gift in tail was made to the Husband, & wife, & they had issue, and the Baron died, the wife disagreed, All descended to the issue.

10. E. 4. fo. 13. The tenant in feof the Lord, and a stranger the Lord disagrees, The stranger shall have all.

20. E. 4. *Fitz. Nuper obiit* 14. If the descendant in a *Nuper obiit* disclaim in the blood, the other coparcener shall have all by descent, and a Mordancester of all.

22. H. 6. 44. A Precipe against 2. If one disclaim, all vests in the other.

So here, in as much as the use passed by the contract, if one of them will wayve that contract,

tract, and take himself to another bargain; then the first contract will stand good for all to the other, and the inrollment for all shall relate to the use of the other, and shall bee paramount to the fine, and destroy the Conveiance by the fine, as it is in *Pophams Case*. 5. *Eliz.*

2. But then comes in the next question, this fine was but of part of the thing bargained and sold, and therefore it will not destroy the contract for all, but onely for part, that is for a Moiety of the services. I take it that this contract being entire, being destroyed in part, is void for all, *Qui partem individue facit nihil facit*. I will example it with other Cases.

34. *H. 6. 21.* It is a good plea in an action of debt for rent, that the lessor entered before the day of payment, for the contract was entire, and therefore the rent not apportionable.

22. *afs. 53.* Lease for life rendring rent for Land part in Franchises, and part in Guildable, in an assise brought at Common Law, for the rent, Conizance shall not bee granted, for the rent is entire, and the Kings Court shall bee preferred Contray to *Thorpe* as it is in 46. *E. 3. 8.* But if the Land is in question, conizance shall be granted for so much as lyes in Franchises.

9. E. 4. 1. One is to lease a chamber, and find the lessee his board, for 6 s. a week, in an Action of debt for the money, *non demisit cameram* is a good plea, for destroy the contract in part, it is destroyed in all, for it is entire.

30. H. 8. Little Broke. I sell my horse, and another mans for 20 l. to be paid at a day to come, and before the day, the other man recovers his horse against the vendee, yet the vendor shall have an action for all the money.

So here the Consideration of the money raises the use that is an entire sum, and if you will have that the Demeasnes shall passe by the contract for the use, and the services, or part of the services shall passe by the grant, what a confusion would that be, and how much of the consideration went for the one, and what for the other. I might that way maintaine my conclusion, that the whole Manor passes to D.

9. E. 4. Choke: a Manor consists of Demeasnes, and services, sever them and the Manor is destroyed, and in Sr. Rol. Heiwards Ca. none shall take by fraction of estates.

3. The third question being, that the husband purchases Landes by Barg: and Sale to him and his wife, and before the deed is inrolled, the husband takes a Fine or a feoffment

ment of the Land , to him and his heires, and then the deed is inrolled , what shall the wife have ? and I saye (as I said) she shall have nothing.

3. *H. 7. 9.* It is plain, that if Lands be conveyed to a feme Covert , if her husband disagree, the feofment made to her is made void, and it shall return to the feoffor. But if a feofment bee made to *I. S.* and a feme Covert, and her husband disagrees, all invest in *I. S.*

Rutland, li. 5. Cook is, that the husband by Indenture limits Lands to the use of his wife, but before the fine levyed, by other Indentures hee limited the same to other uses : so in that case before the assurance is perfected, the husband by whose means, and bargain making, this use was to rise to the wife, before this Assurance finished, makes a new bargain for himself, and the wife if he disagree can take nothing.

Kenus C. Cook. lib 7. It is the husband hath the power to contract for the use, although it be of the wives Lands.

4. The next matter that I intend a question upon the Stat. of inrollments, is (supposing this Land is held in *Capite*) Lands held in *Capite* are bargained and sold to a man, and before the deed is inrolled, the bargainee dyes, his heir within age, whether
here

here be such a dying seised, and a descent, as his Son shall be in ward? and I think it is.

There be divers Cases, where the heir shall be in ward, and yet the Ancestour dyed not seised.

48. E. 3. 8. If there be Lord and tenant, and the tenant is disseised and dies, his heirs within age, the Lord may seise, &c.

20. H. 6. 10. Tenant in tail aliens, and dyes his heir within age, his heir shall be in ward to the Donor.

33. H. 6. 5. Tenant for life, the remainder in fee, he in remainder dies, his heir shall not be in ward for the remainder, but if the tenant for life dye, then by matter *ex post facto* hee shall bee.

11. H. 4. 61. By Hank; and Norton. If the heir recover in a writ of *ayel* on *Cocinage* he shall be in ward.

If the Father lose by error, or false verdict, If the Sonne reverse the Judgement by error or attain, he shall be in ward: If the Father recover and dyes before entry, or execution, and the Son sue execution, he shall be in garde.

Points upon the Statute.

Swinburn Fol. 175. *I will that my villin bee manumitted when my Sonne comes to age; my Sonne dies before the age, the villin shall bee at Liberty, when the Sonne would have been of age.*

DEnters, and manumits a villin: The Question is, a man hath a Manor to which bee villins regardant, he becomes a banckrupt, manumits the villin, Commission is agarded, if the Commissioners may sell the villein? and I have concluded they cannot, For the villein being once at liberty, in this case is enfranchised for ever.

I grant that in divers cases a villein may bee enfranchised *pro tempore*, and yet bee a villein again.

13. E. 4. 2. As if tenant in taile will enfranchise his villin of the Manor, the issue shall have a formedon and reduce both the Manor, and the villin.

33. H. 6. 13. Enfranchisement by tenant for years, or for life, is good but for their time.

And it is much controverted, whether if a
nieff

nieff marry a Freeman, shee be not for ever enfranchised.

Old Nat. Brevi. fol. 6. If her husband dye shee shall bee a nieff again.

33. E. 3. *Statham Vil.* She shall bee neef again even to her own Sonne, when her Lord and husband dyes: But as the Law saith, there is nothing more respected than life, and liberty, So I am of opinion, and I have authority for it, that if she bee once married, either to her Lord, or an other Freeman, shee is at liberty for ever.

31. E. 1. *Fitz. vill.* 46. It is first questioned, and some there are of opinion, that after the death of her husband, she shall bee in bondage again, *quod Bunton negavit*, but if she marry the Lord, then by all shee is enfranchised for ever.

Britton fol. 78. She is enfranchised for ever.

Natura brevi. B. 78. G. I will conclude with the first authority, by *Fitzherbert Brittons* opinion seems reasonable if she divorce not herself, or acknowledge not herself, in Court of record, in favour of liberty, and because she and her husband are but one person in Law, and of the same condition with him.

There bee divers things favoured in Law, as Womens dowers, the King, Lords, Holy Church, ancient records, devises, infants, purchasers and possessions.

possessions; But next life, Liberty of all things is most favoured.

18. E. 4. 6. No amercement lyes against the Sherifs return, yet in a writ of *Libertate probanda*, the Sheriff returns, that he hath no writ of *nativo habendo* depending before him, one may over the contrary *in favorem libertatis*.

Quid propensiores esse debemus ad liberandum, quam ad obligandum.

It hath been made a Question, upon the Statut. 39. Eliz. that appoints the Lands, tenements, and hereditaments of accomptants to bee sold, which they had at the time when they fell into *Averages*, whether if the accomptant shall manumit a villen, he shall be never the less sold, and the best opinion of him that read upon the Statute in this place was, that his liberty could not bee revoked, for here were neither Lands, Tenements, nor hereditaments, and so here.

27. Aflizar: Enfranchisement for a time by act in Law, but if the Lord will manumit his villein for a day, by his voluntary grant, he is at liberty for ever.

The tenant dyes without heir, the Question is this, A Lord is a Bankrupt, and dyes, a Tenancy escheats, if the Signiory, or the Tenancy shall be sold?

I take it, as I have concluded, the tenancy, that

that is the Land shall bee sold, first see the words of the statute *Primo Jacobi*, the Commissioners may proceed in the execution of the Commission, in such sort as they might have done, if the party offendour were alive; this makes an end of the question, for if he were alive, & the tenancy escheated, the Land should be sold. And therefore I shall not need to put you Cases at Common Law, where the tenancy escheating shall be bound to that, where the Land was tyed.

6. H. 4. 1. Tenant in tayl discontinues, and dyes, and leaves a seigniory to descend to the issue in tail, a tenancy escheats, in a formedon by the issue, the tenancy shall bee affests.

14. H. 8. 4. Fitzberbert, *cestui que use* of a Seigniory, a tenancy escheats, the seoffice shall hold the Land to the use of the seoffor.

46. E. 3. 4 Tenant in tail of a Seigniory, a tenancy escheats, tenant in tail discontinues, and dies without issue, the donor shall have a formedon of the Land.

3. A Commission is awarded, *D. is felo de se*, the Question, a Commission is awarded, and the bankrupt becomes *felo de se*, Office is found, if the Almoner shall have his goods, or the Commissioners may sell them: for the Lord Almoner, that he hath all the goods, and chattels of felons of themselves, & a' Deodands,

appears by our Books, and his Charter which I have seen.

6. E. 6. Dier fol. 77. The King leases *Richmond* fee with all *Deodands*, and after grants to the Almoner, the term expires, the grant to the Almoner void, because the other lease was not recited.

2. Mar. Dier fol. 107. The King grants to the Archbishop of *Canter* *Deodands* in *D.* and to the Almoner all in generall, *Hales* is *felo de se*.

Plow: *Dame Hales*, the Bishop is attainted, the King shall have the Lease.

It is true (as it appears in *Dame Hales* case) That when two titles come together, that is the Kings, and a subjects, the Kings shall bee preferred, As if a villein bee a fool naturall, the King, not the Lord shall have him.

If a villein bee *felo de se*, the King, not the Lord shall have his goods. Then a Banck: is *se'o de se*, shall the King, or the Creditours have his goods? I think the Creditours: For if the bankrupt in life had no authority to dispose them, (as it is in *Tibnahams Ca.*) much lesse shall he dispose of them by his death. And admit the Amners Patent were before the Statute of *primo* of the King, yet both the King, and the Amner, by Act of Parliament have given away their title to the Creditours.

4. I have already argued, that the heir of the banck : is in by descent, now the Case is, hee is within age, and an office is found, & that the Land is held of the King *in capite*, the Question, (and the hardest question in my Case) is whether after an office of all this matter found, the Commissioners may sell? And I think they may.

For this office, finding the whole matter, notwithstanding a tenure *in capite*, a dying seised of the tenant, and the minority of an heir is found, yet nothing vests in the King : For when an act of Parliament shall appoint the Land to goe another wayes, and the course taken according to the Statute is found in the office, the King his officers in the Law shall consider of all the whole matter in *Concreto*, and not in *abstracto*, And shall challenge nothing for the King, which belongs not to him, as is seen by a devise made by tenant *in capite*, according to the Statute of 32. H.8. of Wils.

5. The Commissioners imprison the banck. in his own house, 2. Questions, first Whether the Commissioners may imprison him by the Stat. of 13 which gives them authority to dispose of his Body, as they shall see good in their discretions, When as the Statute of *primo* appoints an imprisonment upon a speciall cause

of refusall, as if there were no Law generall to imprison him, in divers cases *expressa nocent* Vide my Moote Book.

I thinke they may. It is true that *Leges posteriores priores contrarias abrogant*, but this is not a contrary Law, but a strengthening, and a confirmation of the former Law in a particular, nor doth it revoke the former no otherwise than that, where by the Statute of 27. H. 8. Leases shall bee under the Duchy seal. This doth not take away the authority of the great seal, but that grants may passe under the great seal since the Statute: And for surenesse now a dayes, they put many times both scales to them.

2. Question is, Whether this Imprisonment in his owne house bee such a dealing in the Commission, by the Commissioners as is intended by the Statute of *primo*, That his dying afterwards shall not alter the case, For if it bee a Lawfull imprisonment, then here is a dealing, if not contrary For *Ea possimus, quæ jure possimus*, For as it is said by *Herle* for a *Maxime*, that all Lects, hundreds, and in 2. E. 3. all Ports, Citties are the Kings, and the Lords have but the use and profits of them under the Kings; So it is said, All *Gaoles* are the Kings Prisons, and none others of the Land, for life, and member belongs to him onely, and the

the Lords have onely the regard; And that is the reason, that in all Corporations in their Charters they alwaies have a grant, and liberty to have a prison.

Auditours by the Statute of *W.2. cap. 11.* may send the Bailly, found in *Arrerages* to Prison; by the Book, it must bee to the next Gaol, though it bee in an other Countie, otherwise an Action of false Imprisonment lies. So our Commissioners must be carefull to pursue their Commission; But because the statute saith, they may dispose of his body at their discretions, therefore to stay him in his own house, or in one of theirs, till he be further examined, I think it not amisse, although I have heard, that some Commissioners have been blamed for not sending him to the Gaol.

1. *A.* makes a feoffment in fee to *B.* by livery, within the view, *B.* Covenants, with *C.* to stand seised to the use of *D.* his son, *A.* enters and makes a feofment to *B.* *D.* enters, and makes a Lease for years to *E.* a merchant, upon condition to have in fee, *E.* is a Bankrupt, *C.* disagrees to the Contract, *E.* becomes a Recusant convict, and hath not Lands sufficient to pay 20 l. a mouth, the Commissioners sell the Land, the King seises the Term, the condition is performed.

The vendee shall have the fee simple

Points.

1. **I**f livery within the view may be countermanded by livery in fact.
2. If the feoffee to whom livery is made within view, before entry Covenants to stand seised to another use, and after enters, if the Covenant good, that is, if by his entry he by relation is in from the time of the Livery.
3. If A Covenants with B. to stand seised to the use of C. and C. enters, and B. disagrees to the Covenant, if the Land shall revert to A.
4. If a Bankrupt hath a lease for years upon condition to have fee, if the Commissioners may sell the Land with the possibility.
5. A Bankrupt hath a term, and is a recusant convict, if the King or the Creditors shall have the Term.

2. The King Lord, Mesn, and tenant of Borough *English* Land, the tenant by licence of the King to create Tenures devises the Land to *A.* in fee, to hold of his heires by Knights service, *A.* is attainted of felonie, and devises the Land to this eldest sonne a merchant Bankrupt, the Mesn enters, the younger sonne reverses the attainder, the eldest waives the devise.

The Commissioners may sell all the Land,

Points

1. **I**f the King may grant to the tenant of another to create new Tenures in prejudice of the mesne as to escheats.

2. If tenure in Borough *English* which is always foccage, may be altered into Tenure in Knights service.

3. If it may be altered as to the custome to descend to the youngest.

4. If it may be altered as to the tenure, but
1 4
not

not as to the custome, if the youngest sonne shall be in ward.

5. Upon the Statute of wils 32. H. 8. Lord and tenant, the tenant is attainted, and devises his Land, and dyes, the heire reverses the attainder before entry of the Lord, if the devise is good.

6. One devises Land to a merchant, and he becoms a Bankrupt, and waives the devise, if the Commissioners may sel the Land.

3. A Merchant makes a lease for life to an infant, the remainder to the King for life of, A. B. enters, and dies seised, the deed is inrolled, A. dies, the infant enters, the lessor, in consideration of marriage, Covenants to stand seised to the use of himself and his wife, and their heirs, the infant at full age makes a feoffment, the heir of the disseisor enters, the lessor is a Bankrupt, the Commissioners sel, lessor dies, the feme waives.

This is a good Sale of all the Land in possession, and reversion,

Points.

1. **W**hether the inrolment doth not relate to avoid the descent.

2. Whether the entry of the infant reduce the reversion.

3. Whether the Sale not being good against the wife, is made good by her waiver.

Vide ante the principall case.

5. One grants a rent charge to a Physician, and his heirs, *pro Consilio impenso & impendendo*, the Physician is his own Apothecary, and becomes non solvent for drugs and simples, which he used in his Art, A Commission is awarded, the Physician keeps his house for fear of Arrests, the Physician brings a writ of Annuity, and recovers by erroneous Judgement, the Commissioners sell the rent, the recoveree reverseth the Judgement, the Physician dies.

This

This Sale of the Commissioners was good for this rent, but not to take effect during the life of the Physician.

Points.

1. **I**f an Annuity in fee bee granted *pro Con-*
filio may be sold.
2. Whether he have any Election after he is bankrupt.
3. Whether the bringing of this Annuity which is reversed, be an election.
6. One makes a gift in tail rendring rent, and dies, the rent is arreare, A disseisor enters, and levies a fine, 5. years pass, the heir of the donor is a Bankrupt.

The Commissioners shall sell the rent, and the arrearages.

Three Points upon the Statute.

1. **U**pon the Statute of fines, the Second and Third upon the Statutes of limitations, and Bankrupt.

1. Upon the Statute of fines, that is, If fines of the Land shall be a Barre for the rent.

2. And 3 Upon the Statute of limitations: If Commissioners may sell when the party was concluded by the Statute of Limitations:

6. *Jacobi Banco Regis*, Executors notwithstanding no seisin in their Testator by 50. years, shall destreine by the statute of 32.H.8.

7. *A.* and *B.* Tenants in Common of the mannor of *D.* and Jointenants of the mannor of *S.* They by deed Polle bargain and sell Common of Pasture, within the Mannors for a Cow to *C.* and his wife, and to the heirs of their two bodyes begotten, *C.* the husband grants the Common to *E.* in fee, the wife dies without issue, *E.* is a Bankrupt.

E. Had Common for a Cow, but it is neither Land, tenement, nor hereditament which may be sold by the Commissioners.

8. The King grants to *I. S.* that he onely for his life shall have the Importation of steel, he assignes his Patent to *I. N.* a Merchant,
I. N.

I. N. becomes non solvent, and after acknowledges himself to be a villein regardant to the Honnor of Hampton-Court, a Commission is awarded.

I. N. Is a Bankrupt, and the Commissioners may sell all his Lands, and goods, but not the Monopoly.

9. *A. and B. Jointenants covenant for naturall affection to stand seised to the use of C. for life, C. enters, and B. dyes, C. dies, the heir of B. maks a gift in mortmain, the Lord before entry bargains and fels the Signiory to I. S. who enters, and makes a gift in tail, the remainder to I. N. a Merchant, tenant in tail is attainted of treason, and suffers a common recovery, office is found, I. N. becoms a Bankrupt, tenant in tail dies without issue, I. N. waives the remainder.*

The Commissioners may sel the moiety of this remainder.

10. *One grants an Advowson to a feme Covert sole Merchant, the Church becoms void, the husband in consideration that I. S. doth enter into bond to preach twice a week, present him to the Benefice, the feme becoms a Bankrupt, the husband dies, the feme waives the*

the grant, the Commissioners within the 6. months sell the Presentation, and the advowson.

This a good Sale of the Advowson, but the King shall present.

5. Division.

What Copy-hold Lande of a Bankrurt the Commissioners may sell, and in What case Composition shall be made with the Lord, and in what not.

1. **A** Tenant by copy of *Wb.* acre surrenders to the use of *B.* for years, upon condition that he will not doe waste, and after he surrenders the reversion into the hands of 2. tenants to the use of *C.* a merchant in fee, the Lord makes a feoffment of the acre to *D. C.* departs the realm, and after is *non solvent*, a Privy seal is awarded against him, the tenants present the surrender to the Court of the Lord, *C.* will not return, the Commissioners sell the reversion to *E. B.* makes waste, *E.* tenders Composition to *D.* who refuseth it, and *E.* enters for the Condition broken.

The

*The sale is good, and the entry of E. conge-
able, but no Composition is due.*

Points in the Case at Common Law.

1. Tenant by Copy surrenders into the hands of 2. tenants, and the Lord separates the free hold from the Manor, if the surrender is void.

2. Tenant by Copy, surrenders to one for years, and after to the use of another in fee, if good without Attornment.

3. If the tenants are bound to Present the surrender at the Lords Court, after he had separated the freehold from the Manor: That is whether the Presentment shall not interest the party to whose use &c. by relation from the surrender.

4. If tenant by Copy surrender to the use of one for years upon condition, and after he surrenders the reversion to the use of another in fee, & after the condition is broken, if the grantee in reversion shall enter for the forfeiture by

by the Statute of 32.H.8.cap.34.

5. If a Copy-holder lessee for years by surrender commits waste, if this is a forfeiture to the Lord, or onely to him in reversion, or of the reversion.

Points upon the Statute.

1. If a Merchant departs by licence, and upon a privie seal will not return, but is *non solvent*, shall be a Bankrupt.

2. One had onely the free-hold of a sole Copiholder, if such a Copy-hold may be transferred by sale of the Commissioners.

3. A Copy-hold is surrendred to the use of a husband, who will not bee admitted, if the Commissioners can sel.

4. Whether one fine, 2. fines, or no fine be due to the Lord.

5. Admitting a fine were due, and the Lord after tender refuseth it, what remedy the Vende hath for the Land, or the Lord for the fine.

1. When

1. When there is a Lord of a mannor, and Copsy-holder of inheritance surrenders into 2. tenants hands, and then the Lord makes a feofment of the Copsy-hold, I take it that this severance of the Free-hold, and of the Copsy-hold from the Mannor shall not destroy the surrender, For when the Copsy-holder hath once surrendred, he hath dismissed himself of all his interest, and the right is in the party to whose use the surrender was made.

Buntings Ca. Coke. li. 4. The death of the surrenderer, the death of the tenants, nor the death of the party to whose use the surrender was made, shall not alter the case. But the party to whose use such a surrender is made, hath such an interest as shall descend to his heir, for his heir shall bee admitted, and by the same reason his interest shall remain, notwithstanding the Lord sell the Free-hold (as it is said in *Morrels case*,) the custom hath so established, and fixt the estate of the Copsy-holders that the Lords severing it from the Mannour, cannot alter it.

It was adjudged, that the custome of a Mannour being, that if tenant for life by copy dye, his wife shall have her Widdowes estate, the Lord dissolved his Mannor, the Copsy-holder, wife dyed, he took a new wife, and then he dyed, the Second wife had her Widdowes estate, and yet there was no Court, whether

ther she could come to have the death of her Husband found and presented, and where she might be admitted, &c.

But admit that the Surrender had been made into the Lords hands, out of the Court, as by *Adelwich* his case it may, or admit it had been made in Court, and the partie to whose use it was made, had tendered the Lord his due fine, and the Lord would demand more, and so defer the admittance: In these cases, the Law is plain, that the partie may enter, and no Action lies by the Lord against him. And what if the Lord dissolve the Mannor, shall that alter the case? No, no more, than if a Coppy-holder of inheritance die, and the Lord sever the Freehold from the Coppy before the Heir be admitted, this shall not destroy the Heirs estate, but he may lawfully enter and hold it for ever without admittance.

2. But here notwithstanding this severance of the Freehold from the Mannor, the two Tenants present the Surrender the next Court held by the Lord for the Mannor. The Question is first, whether the Tenants were bound to do it or no? And the next, what is wrought by it? And I take it they ought to present it; For notwithstanding the Coppyhold be severed from the Mannor, yet they are not severed, they be Tenants still, and they must doe their duties, and the rather, because

it is not altogether severed, for Tenant for years of the Coppy-hold, remaines still Tenant to the Lord, and his rents and duties are to be done to the first Lord, and not to the Coppy-holder in reversion: But to what use is this presentment of theirs? I take it to this use. It shall have relation to the Surrender and interest of the partie, to whose use it was made from the time of the Surrender. Like as an Office found 10. years after an escheat, will intitle the King to all the mean profits from the death of the partie; Or as a Deed acknowledged to be inrolled, shall be inrolled notwithstanding the death of any of the parties, & shall have relation from the date of the Deed, to intitle the bargaineer to the profits: Or as a Legacy is given by Will, cannot be sued for till the Will be proved, & then the probate makes the Legacy due by relation, ever since the death of the Testator; Even so the presentment hath relation to intitle the partie to whose use the Surrender was made, from the time of the Surrender; And this appears plainly by *Ross-wels Case in Chancery*, some Tenant for life of a Coppy-hold, the Lord grants the Reversion to three, the Baron surrenders to one of them, who first dyes, there the Lord would have kept the Land as occupant, during the Husband's life. 9 *Eliz. Dyer.* 267.

But it was decreed, that if the Husband
and

and Wife would surrender to the surviving lessees in reversion, the Lord must admit them, or else avoide the possession; So if the Lord will not admit the partie to whose use, the party shall have the Lands; if a man surrender to the use of his last Will and Testament, the Lord shall not have the Land but the tenant during his life.

3. But before I go any further, let us consider of this Lease, it is by a surrender upon Condition, and he in reversion surrenders to anothers use, and the Condition is broken: My Question is, whether he in reversion shall enter for the Condition? by the Common Law he cannot, then may he enter by the Statute of 32. H. 8. Cap. 34. of conditions, there be divers Statutes which reach Coppy-holds, though they be not named.

Heydons Case, lib. 3. Coppy-holders are lessees within the Statute, 32. H. 8. of Monasteries.

The Statute of *Cui in vita, Receipt, quod ei desortiat, Coke li. 4. Kite. per Wray*, Coppyhold estate is within the Statute of *Champertie*, and maintainance, 32. H. 8. Cap. 9. *Deane and Chapter of Worcesters Case, Coke li. 6.* Coppyhold is within the Statute of 13. El. of leases by spirituall persons, Lands usually let &c.

Lillingstones Case Adjudged 27. Eliz. That it the Lord in feof the Copy-holder to anothers use, that the Copy-hold is saved by the Proviso in the Statute of 27.H.8.

Margaret Podgers Case. A Copy-holder is bound by fine, and 5. years.

The generall rule is layed down in *Heydon* case, That all Statutes that may be for the good o^t the Copy-holder shall extend, to theē therefore I am of opinion, that such a grantee shall enter for non payment of rent, or for doing of waste, as the words of the Statute are; For it is for the good of the Copy-holders that the Farmers be bound to pay their rents and keep their tenements in repzir. I should make small question of this if the lease were made by licence, for then it is a plain lease at Common Law, and an *Ejectione firme* will ly: But here the Lessee comes in by the Lords admittance, but that is answered by my Lord Cook, when he is once admitted, he is in immediately from the surrender and in the Per.

4 But this Condition is, for waste, and it is broken, whether is there a forfeiture to him in reversion, or a forfeiture to the Lord of the estate in fee simple? It is to the Lessor, not to the Lord, wherein I fall again upon the difference, when it is by licence, & when by surrender, for I take him to bee as if he had a particular

Eliz. cular estate with a remainder over. In *Podges*
 C. fo. 107. *Si cop pour vie jtit semble al case del*
 Duke de Norff.

Points upon the Statute.

A Merchant being a sufficient man departs the Realm, and beyond the Seas becomes *non solvent*, and so refuses to return, although he bee served with a privy Seal to return: Here be two Questions, First whether he be a Banckrupt for not returning; For he is not within the Compass of the Statute of departing the Realme. The next Question is, (admitting him to be a Banckrupt:) Whether the King shall have his Goods, as the goods of a fugitive, or els whether they shall Goe to satisfy the Creditors. For the first, I think he is a Banckrupt, And although he be not within the compass of these words, (depart the Realm) yet it is plain, he is within these words (absents himself) for although his departure was no offence either to the King or his Creditors (For Merchants both by the Common Law, and notwithstanding the Statutes of 5. R. 2. cap. 2. or the Statutes of 13. Eliz) might depart the realm without licence, except the

King (as it is in *Natura Brevium* fol. 85. had made proclamation to the Contrary) Yet the King not onely by the Stat. but by the Common Law, as he may forbid a man to depart, so he may send for him at his pleasure to return; And that is proved by the express Book of 2. & 3. *Phil.* and *Mary.* fol. 128.

Dyer. Where it is said, That if he be commanded to return, either by the privy Seal, or the great Seal, and refuse, his Lands, and his Chattels shall bee seised into the Kings hands, and for that a precedent was found in the Exchequer, where in *Anno 19 E. 2.* It was *William de Brittain's* case, although it is true (as I said) the first departure is no offence according to the Book of 13. *Eliz. D. fol. 296* But then admitting he is a Banckrupt, and admitting that by his refusall to return he hath forfeited all his goods, and Lands to the King, The Question is, Whether the King, or the Creditors shall be preferred? And I take it, the (Creditors shall be preferred) Yet the agreed rule is, that when a title falls to the King, and a Common person both at once, the King shall be preferred.

Dame Hales, villein & Ideot, Priority, & posteriority. 5. E 3.

But I rely upon a Case, which was ruled upon a Trial by my Lord *Cok. 12. Jac. in Newman & Martin, on Martins suit adjudged Bankrupt*

Baukrupht because he was beyond the Seas,
 &c.

2. Points upon the Statute. One hath the freehold and another hath the Coppy-hold of one onely acre severed from the Mannor, this is plain, as it is in my Lord *Cokes* 4. reports in Case. This Coppy-hold by no means can be transferred from one to another. But now our question is, Whether this Coppy may be sold by Commissioners? I say, *Parliamentum potest omnia*, By act of Parliament it may be sold, And here the very words of the Parliament are, that the Commissioners may sell his Coppy-hold estate.

The Law was taken before *Corbets* case was first argued, That it was impossible to cut off perpetuities, yet there were divers before, that were cut off by Act of Parliament, and they all that argued for the perpetuities agreed, that by Act of Parliament it might be done. By the Common Law a thing in action cannot be transferred, as a debt upon an Obligation; Yet by the Statute of Banckrupt, *Jacobi primo*, we see it is done every day.

But it will be objected, that the Statute goes on and saith, That the Vendee shall compound with the Lord for the Fine, and be admitted: Now if there can be no admittance,

then no sale, and it shall be intended such Copyhold whereof admittance may be. And in *Dr. Bonhams* case, divers cases are put where divers Acts of Parliament are void; and divers others construed directly contrary to the words. But out of that Case I will prove this to be good; for first this Act saith, the Commissioners may sell, then there is their authority; the Vendee shall compound, that is a second action which must be done, if it may be done. *Hillary 38. Eliz.* A Grant was made to the Mayor and Commonalty of *London*, that the Mayor should have the search, &c. of all Handicrafts, and should punish them, but granted no Court where the same should be punished; this was good for to search, and to discover; but void for him to punish, but it must be punished, as it may be otherwise.

The Statute of 5. *Eliz.* cap. 13 of Highways saith, Who comes not at the common ways shall forfeit, and orders, that the offence shall be presented at the next Sessions, &c. Upon pain of fourty shillings; no Certificate is made, yet the offence shall be punished.

3. But now we are upon the point of Fines, a question rises in this Case, whether two Fines, or but one, or no Fine be due to the Lord; and I think a Fine is due. Plainly two Fines should have been paid, one to the Lord
of

of the Mannor upon the surrender of *A.* to *C.* and another upon the sale by the Commissioners, as it is in the 4. Reports, fo. 22. the heir surrenders before admittance, the Lord shall have two Fines. But in *Hubbard* and *Hammonds* case, it is said no Fine is due to the Lord before admittance; for the admittance is the cause of the Fine; and if after admittance it be denied, it is a forfeiture. But I take it in this case, the Lord shall have no Fines; for the Statute must have a reasonable construction; and indeed for all parties according to equity; and in all Statutes where the ordering of things is referred to mens discretions, equity, and good Conscience ought to be respected; and therefore it is said, 3.E.3. An accompt ought to be amended by the Auditors, according to equity and good faith: But what remedy hath the Lord for it?

4 But here a Fine is tendered, and refused; Now the Question is double, 1. What remedy generally? 2. Whether it be lost for ever or not? For the first, if it had been in a case that the Lord could have admitted him, he should have had the ordinary remedy, as all Lords have for their Fines, that is upon presentment of a Surrender, or of the death of a Tenant, or of sale by Commissioners, the order is to call the party that should be admitted, and if he

he come not in time, to seize his Land : But here can be no Calling, for here's no Court : Surely, I think as the Vndee may enter without admittance, so the Lord may enter again upon him, and seize the Land till his Fines be paid ; but these Fines have been tendred, and refused.

We see that tender and refusal in many cases is peremptory, as *Littleton* in case of Mortgage.

27 *Edw. 3. 88. Un distr. pur dam. sesant, & si avyde*, the Tenant pleaded, that before the taking, at the taking, and after the taking, he tendered sufficient amends, and the Avowant refused, he hath lost his damages, and shall pay damages, &c.

22 *Hen. 6. 44.* A man is bound in an Obligation to stand to the award of J.S. he awards that the one shall release the other, who tenders a release, & the other refuses, in Action of Debt, *sur le ob.* tender and refusal is a good plea, *sans dire uncor Priſt.*

But yet in the same case it is put, That if money had been awarded, and tendered, and refused, the Bond had been saved, but the duty had remained.

45 *Edw. 3. 9.* The Lord distreins, the Tenant tenders, the Lord refuses, yet the Rent is not lost, but at another time the Lord may distrein.

Britn ; If the Tenant tender his homage, and the Lord refuse, he cannot distrein, but upon a request, if the tenant refuse, he may distrein. So here, the Tenant tenders his Fine, the Lord refuses, I take it the Fine is not lost; but after a new request the Lord may seize.

5. The last point upon my Statute is, A Bankrupt purchases a Copy-hold, and the Tenant surrenders into two Tenants hands to the use of the Bankrupt, and now he will not be admitted : Whether the Commissioners shall sell the Copy-hold? And I think they shall by the very words of the Statute, which are, That the Commissioners shall sell all Lands which the Bankrupt shall purchase with any other persons of trust, or to his secret use; If then they may sell lands wherein he hath secret use, much more, Lands wherein he hath an express use: And in this Case, if his negligence to pray to be admitted, or his absence beyond Sea shall hinder the present Sale, and he die, his heir may be admitted after his decease : And then a greater Question will rise, Whether the Land may be sold, or not?

2. A Copy-holder of Inheritance, where the custom is, that the wife shall be indowed, surrenders into the hands of two Tenants to the use of the Mayor and Commonalty of D. in Fee, and dies; the wife marryes with I. S.

a Merchant, the Mayor and Commonalty are admitted, the heir of the Copy-holder enters: *I. S.* and his wife affirm a Plaint in the Lords Court, in nature of a Writ of Dower, and recover against the heir, the Mayor and Commonalty enter; *I. S.* and his wife sue a Precept, in nature of a *Scire facias*, against the Mayor and Commonalty, for to have a Writ *De Dote assignanda*, and damages: *I. S.* becomes a Bankrupt, the Commissioners sell the Copy-hold, and assigne the damages which shall be recovered; the Vendee compounds with the Lord.

This is a good Sale for a third part of the Copy-hold, during the Coverture, and a good Composition; but the assignment of the damages is void.

3. *A.* Is Tenant in Tail of a Mannor, where the custom is, that the wife of a Copy-holder shall have a widows estate: *A.* grants white Acre to *B.* by *Copie* for life, and after he makes a Lease of white Acre for life to *F.* the wife of *B.* dies: *A.* makes a Feoffment of the Mannor to *G.* and all the Tenants attorne: *A.* dies, *B.* takes a second wife, and dies; the issue in Tail enters into the Mannor; the second wife takes *M.* to husband, who becomes a Bankrupt;

rupt; the Commissioners sell white Acre, the Vendee compounds with the issue in Tail, and enters, F. dies.

The sale is good during Coverture, and the Composition is good.

4. Baron and Feme have issue, A. a daughter, the Baron dies, the Mannor of sale is given to the Feme for life, the remainder to the heirs of the Baron and Feme: a Copy-holder surrenders to the use of himself in Tail; the remainder to A. in Fee, the Feme takes a second husband, and hath issue B. another daughter and dies, A. enters, the Copy-holder suffers a customary recovery, and dies without issue; his heir being a Merchant, and Bankrupt: B. enters, the Commissioners sell the Copy-hold: the Vendee compounds with B.

The Sale is good, but the Composition is good, but for a fourth part.

1. A. Shall have a moiety as heir of the husband, and the moiety of the other moiety as heir of the Feme, and B. the residue.

2. If Tenant by Copy, by Recovery may bar the remainder.

3. If

3. If when the Lord is in remainder, if it be not so annexed to the Fee, that it cannot be pulled out by a recovery.

5. The Mannor of *D.* is holden of the Mannor of *S.* by Copy, and *I.S.* holds a house, and Land Common for 10. Cows of the Mannor of *D.* by Copy in Fee: the Lord of *D.* surrenders his Mannor to the use of *I.S.* for life, who is admitted accordingly: *I.S.* grants the Common by Copy to *A.* a merchant, *A.* is admitted, and is a Bankrupt; *I.S.* dies, the Lord of *D.* enters, the Commissioners sell the Common, the Vendee compounds with the Executors of *I.S.*

The Common cannot be sold, and if it might the Composition shall be with the Lord of D.

6. Tenant by Copy is disseised, and the Disseisor is admitted Tenant by the Lord; the Lord bargains and sells the Mannor to *I.S.* in Fee, by Deed inrol'd, the Disseisee becomes a Bankrupt; the Commissioners sell the Copyhold, the Vendee compounds with the Bargainer.

This is a good Sale, and a good Composition.

1. If Tenant by Copy may be disseised, or ousted, and this shall be no disseisin to the Lord.

2. If the Lord by the admittance of the Disseisor hath dispensed with the disseisin in part, and so he may apportion his own wrong.

7. *A.* disseises *B.* of the Mannor of *S.* and dies seized, *C.* the son of *A.* enters, a Copyhold escheats; *D.* enters and disseises *C.* and Leases the Mannor for years to *E.* who grants the Copy to *F.* in Fee; *F.* dies, his heir is sworn of the Homage, and becomes a Bankrupt; *D.* dies, *B.* enters, the Commissioners sell the Copyhold, the Vendee compounds with *B.* and is admitted; the heir of *D.* recovers in a Mortdauncester, *C.* recovers in Entry *sur disseisin*, and *B.* recovers against him in a Writ of Right.

The Sale is good, and the Composition good.

8. *A.* and *B.* joynt-Tenants in Fee of a Mannor, they grant wh. Acre to *I.S.* for life by Copy; *A.* enters into Religion at *Roan*, *B.* makes a Lease for years of the Acre to *C.* to whom *I.S.* surrenders; *B.* dies, *A.* is deraigned, *C.* surrenders to *A.* *I.S.* becomes a Bankrupt,

rupt; the Commissioners sell the Copy-hold, the Vendee compounds with *A.* the heir of *B.* enters.

This is a good Sale, and a good Composition for a moiety.

9 Six Copy-holds escheat, the Lord grants them to *A.* a Merchant indebted, and after the Lord makes a Feoffment of the Free-hold of the Copy-hold to *B.C.* and *D.* the Merchant gives over Trading, *B.* disseises *C.* and *D.* the Merchant continues his debt by Interest, seven years past, *C.* and *D.* recover against *B.* and have judgement to hold in severalty; *C.* and *D.* make partition; the Merchant renues his bonds with the Creditors, and keeps his house, the Commissioners sell the Copy-holds, the Vendee compounds with *B.C.* and *D.* severally, and is severally admitted.

The Sale is not good, because the Merchant is no Bankrupt; but if it were good, the Composition was good, and B.C. and D. have three Customary Mannors.

The sixth Division.

What Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes, and Debts of a Bankrupt may be sold by the Commissioners.

1. **B**Efore *Quia Emptores*, one makes a Feoffment in Fee, rendring Rent to be holden by Forein service, and a tenant dies, and his heir dies before entry, and a stranger abates, the Lord becomes a Bankrupt, the heir recovers in Mortdauncester, the Commissioners sell all the debts of the Lord.

The Vendee shall have two actions of debt for two several Reliefs.

1. If the heir shall pay relief when his Ancestor had but a possession in Law; He shall. *Kelloway 173. 6.H.8.*

2. If Debt lies against the heir, for relief due, after the death of his grandfather, 13.E.3. Relief 6. A distress lyes.

L

3. If

3. If Fee-farm made before *Quia Emptores* shall pay Relief, 45. E.3. fol.15. now it shall not.

4. If Tenant in Knights Service shall pay Relief. *Kelloway*.

5. If the heir shall pay relief for Land which he had by recovery.

6. Debt lyes for relief by the Lord himself, 32.H.8. *Brook*. It lies for his executors.

7. If relief is such a debt or duty which the Commissioners may sell.

2. *A*. Tenant of two Acres herriotable Covenants to stand seized to the use of himself for life, the remainder to his son in Fee, with clause of revocation, and for money paid he bargains one Acre to *B.B.* dies, the Lord seizes a Herriot, the heir of *B.* re-enseoffes *A.A.* revokes the first deed, the Lord is a Bankrupt, *A.* dies, the Commissioners sell all the Lords goods to *C.C.* takes relief of the heir of *A.*

C. Shall have detinue for two Herriots against the executors of A.

1. If two Herriots, or but one are due notwithstanding

withstanding the repurchase, 34. E. 3. Herriot
1. 2. They are due.

2. If the power of revocation be not gone
notwithstanding the repurchase.

3. If acceptance of relief of the heir may
be pleaded by the Executors in an action
against them for the Herriot, 26. E. 1. H. 6.
Quære.

4. If detinue lies for a Herriot-Custom,
6. E. 3. 29. R. 2. Herriot 4. and 5. the Lord
may seize it in all the goods.

5. If the property of the Herriot is so vested
in the Lord before seizure, that the Commis-
sioners may sell it.

3. The King grants the office of *Aulnage* of
London to a Merchant stranger for years, with
a Fee of 20. l. *per annum*, who assigns it to a
Merchant Denizen indebted, who discontinues
his Trade of Merchandize, and lives by his
office, and enters into recognizances for his
debts, and makes *I. S.* his deputy, and is made
Steward of the Tower of *London*, the recog-
nizances are forfeited, and he keeps himself in
the Tower, office is found.

The Commissioners shall neither sell the Office, nor the Fee.

1. If the Lease be good, because no office of trust, or confidence.

2. If discontinuance of Merchandize is an exemption from the Statute, when the Creditors have taken new assurances.

3. If the Steward of the Tower is not sole Judge there by Prescription.

4. A Feme sole Alien, grants to *A.* a Scottish Merchant, the office to be the master of her horse, with a Fee of 20.l. *per annum* for his life; she takes a husband, who is made King of England, who by his Letters Patents grants the Mastership of the Queens Horse to *I.S.* with a Pension out of the Exchequer, the Scot becomes a Bankrupt.

The Commissioners shall not sell his office, but they may sell his fee, and the Vendee shall have an Annuity for it against the Queen.

5. A Resiant is injoyned in the Leet to reform a publique nusans by him made before such

such a day, upon pain of 10.l. at the next Court he is presented, because no reformation is made; and there then the Tenant Traverses the Presentment, that he is not guilty; the Traverse is disallowed, the Lord becomes a Bankrupt, the Affeerors refuse to affeere the amerciament, the Commissioners sell all the debts of the Bankrupt to *A.*

A. Shall have an action of debt for this amerciament.

6. *A.* sues execution of a Statute Merchant, and the Conizors Land is extended at too high a value, and refused by the Ex-endor, and delivered to the Jurors, *B.* defeats the execution by extending an elder Statute; *A.* is a Bankrupt, the Commissioners sell all his debts, the elder Statute is satisfied, the Jurors will not enter.

This is a good Sale of the possibility to extend, and the Vendee shall have a Scire facias against the Tenant by the elder Statute, and the terretenants, and the Jurors to revive the former Execution.

7. *A.* and *B.* Tenants in Common, grant a rent of 10.l. per annum to *C.* who brings an Annuity against *A.* and recovers, and after he

istreins and Avows upon B. and becomes a Bankrupt, the Commissioners sell the Annuity, and the rent, a fourth part of the Land descends to the Vendee.

The sale of the Annuity, and also of the rent were good, but he shall Avow upon B. but for 5.l. per annum.

1. If he can bring an Annuity against one, and distrein the other.

2. How a Rent shall be apportioned when part of the Land descends to the grantee.

3. If a Rent-charge be within this Statute, because it is not within the words.

8. A Mannor in *Surrey* is given to Baron and Feme, and to the heirs of the Baron, the Baron dies, his heir, being a Merchant, claims the heir-looms; the Executors of the Father claim them as Chattels, the heir sells the Reversion, and becomes a Bankrupt, the Commissioners sell the heir-looms.

This is a good sale, but the wife shall have the use of them during her life.

9. One makes a Feoffment upon condition that

that the heir of the Feoffee shall inſcof I. S. the Feoffee grants a Rent-charge, the Feoffor enters for the Condition, and dies; the Feoffee re-enters, and 2. Co-partners being the heirs of the Feoffor, bring a Mortdaunceſter againſt the Feoffee, and recover the Land, and damages, they have other Land in execution by Elegit for the damages, the one dies, the other is a Bankrupt.

The Commissioners ſhall ſell all the Extent.

10. A Diſſeiſor makes a leaſe for life to A. who makes a Leaſe for years to B. a Merchant ſtranger, who is made Denizen, upon Condition that he ſhall not depart the Realm, the Diſſeiſee confirms his eſtate, Tenant for life dies, the Diſſeiſor enters, B. being *non ſolvent*, by licence of the King (with a *Non obſtante*) departs the Realm, the Commissioners ſell the terme, the Vendee enters upon the Diſſeiſor.

The ſale of this terme is good.

11. A. By Deed Poll demiſes the Land of B. to C. a Merchants, who enters, B. re-enters, C. in an action of Covenant, grounded upon the Deed, recovers 10. l. damages againſt A. C. being indebted is committed to Priſon by the High Commissioners for non payment of a

Fine by them assessed, and there he remains by six moneths ; the Commissioners assign the damages to *D.* who sues a *Scire facias* in his own name against *A.* and hath Judgement to have Execution, *A.* brings a Writ of Error against *C.* of the first Judgement, *C.* confesses the Error.

The Judgement is erroneous, and yet the assignment of the damages is good, and D. shall have Execution.

12. *A.* Makes a Joynture to his wife an Alien of part of his Land, and dies, she is made a Denizen, and takes a Bankrupt to husband, the Commissioners sell the Joynture, part of it is evicted by elder title, she sues a *Scire facias*, and recovers other Land in recompence, an office is found, the Commissioners sell as well the Land recovered in value, as the residue which was not evicted.

The sale of the Land recovered in value is good, but not for the residue.

For New-Inn.

The Case.

THe Land of *A.* is extended for the debt of *B.* and *A.* grants the reversion to *G.* in Tail, *B.* attornes, and hath a Liberate, *A.* grants the reversion of *C.* to *D.* a Feme sole Merchant D. nizen of *Ireland*; *C.* commits Treason, and attorns, and suffers a common recovery to the use of himself; *D.* takes *E.* an Alien and Londoner to husband, *C.* is attainted, *D.* continues sole Merchant, *E.* is naturalized, *D.* is indebted, and elopes, *C.* dies without issue, *E.* enters, and is *non solvent*, a Commission is awarded, and proclaimed, *D.* hath issue and dies, an office is found, the Term expires.

Conclusion { *The Land shall be sold by the Commissioners.*

1. When Land is extended, and before a Liberate, it is to be considered in whom the Land is, 3. E. 6. 68. It is said, that goods extended are in the custody of the Law, but yet not

not so out of the Conizors possession, but that they may be extended for the Kings debt due by the Conizor, 41. E. 3. *Fitz Recognizance* 38. Land was extended by the Sheriff, and before Liberate, the Lands were extended for the Kings debt, and so process stayed, 33. H. 8. *Broke Recognizance* 41. Liberate may be taken out 7. years after the extent, 41. E. 3. fol. 1. It is questioned whether the party, or the King shall have the mean profits of Lands taken by *cape grand*, till a *petty cape*.

Also it will be objected, that a reversion will pass by words of possession, but possession will not pass by words of reversion. *Frockmorton*, and *Tracy*, 43. E. 3. and *Smith*, and *Stapleton*.

But except we prove this reversion to be well granted, we are at an end of our case, for all the rest depends upon this point.

We say then, that when Lands are extended, it is plain, they are out of the Conizor presently: And although it seems, that for the time they are in the Kings hands, yet when the Liberate comes they are in the Conizee *ab initio*, and by strong relation.

So as if a Mannor be extended to which an Advowson is appendent, and the Church becomes void, and Liberate sued, the Conizee (and neither the King, nor the Conizor) shall present. So if Arrearages of Rents fall due between

between the extent and the Liberate, the Co-
nizee shall distrein, and avow for them.

Wherein I will compare it to *Longs Case*,
that was in the Common Pleas, *Pasch. 31.*
Eliz. Rot. 2024. one granted a Mannor to
which an Advowson was appendent, and made
Livery, the Church became void, and after-
wards the Tenants attorned, the grantee shall
present, and the Attornment shall relate to
make the grantee in from the time of the Fe-
offment. And although it is said, *8 H. 5. fo. 10.*
that no man can attorn to a grant of a rever-
sion, that hath as yet nothing in possession, but
hopes or possibilities, As if Tenant for life
grant his Estate upon condition, and the rever-
sion is granted, and he attorns, and then enters
for the Condition, yet the attornment is void:
But yet the Law will respect such a possibility,
as *5. E. 3. fo. 36.* Lands were given to the Ba-
ron and Feme, the Barou dies, the Feme makes
a Lease for her own life, the Lessee is implead-
ed in a *Cui in vita*, and he vouches the Feme,
and she prays in aid of the heir of the husband,
and well, and yet the Feme had nothing.

If I bargain, and sell Lands to one for life,
and then I grant the reversion, and the Bar-
gantee attorns, and then the Deed is inrolled,
this Reversion is well granted, and this is a
good Attornment.

But it may be objected, that the Land is not
in

in the Conizee upon the extent, for if it be extended at too high a rate, he may return it upon the extendors; for so are the Books of 44. E.3.2. 2. H.4. 17.21. E.3.21. 15.H.7.16. and divers other Books.

But I make this an Argument for my self; for that shews it is out of the Conizor, and if the Land were in the extendors hands, no doubt but the reversion might be granted, and by the Book of 1.E.3. 8. *in a quid juris clamat*, they shall be forced to attorne.

2. But admit that such a grant of reversion may be made, yet no grant of a reversion can be good without Attornment of the particular Tenant, and here your Conizee the Tenant attorns before his time, that is, before he hath possession by the Liberate, and so the case of 8. H.5. fol.10. comes full against you. To that I answer, That the Tenant by Statute is esteemed (in point of Attornment) as Tenant for terme of years; for so the Case of 1.E.3. fol.8. esteems him. And I make small Question, but that if a man make a Lease for years, and before the Lessee enter the Lessor grants the reversion, and the Lessee attorns, This is a good Attornment; for it matters not whether ever the Lessee entered or not; for the Land was in him to give, grant, or forfeit, and 21. H.7. fol.27. after such a Lease, If the Lessee will

will not enter, yet (if the Lessor waive the possession) and a rent day accrews, the Lessor may have an Action of debt against the Lessee without ever making any averment that the Lessee entered. So in our Case, although the Conizee cannot enter of himself, but by the Livery of the Sheriff, yet he is not in by the Sheriff, but by the Law in the Post: And it is not very absurd to say, he is in by and under, and from the Conizor: for if the Conizor had Covenanted, that any to whom he (after the Recognizance) had conveyed the Land should have enjoyed it against all claiming from by and under him, and the Conizee had sued execution, the Covenant had been broken.

3. Then allowing that this first grant of the reversion is good to *C.* in Tail; Then the next question is that *C.* commits Treason, and *A.* grants the reversion of *C.* in Fee to *D.* and *C.* Attornes, Whether this be a good Attornment? Whether if *C.* comes afterwards to be attainted for the Treason, and an office being found hath relation to intitle the King to the Land from the time of the Treason committed, that is, Whether this office shall not relate to make *C.* no Tenant of the Land from the time of the Treason committed. I will agree, it will relate to avoid all charges and incumbrances

berances made by C. but yet the Attornment is good; for that I will put but one Case, that comes full home to the point, which is, Sir *Miles Fleetwoods* Case, in my Lord *Cooks* 8. Report, which is that the Attainder, and office relate to intitle the King to the Land from the time of the Treason committed, but not to Chattels sold, or to the mean profits of Lands received, so as for the mean time C. was Tenant, and might take the profits, and the rents paid to him by the Tenants were well paid, then *a fortiore* might he do, and execute all instrumental Acts, as if he had been Lord of a Mannor, and a Copy-holder (after the Treason, and before Attainder) had surrendered to the use of another, who had been admitted, the surrender and admittance had been good, and so consequently the Attornment; for by the Attornment he parts with nothing of his own, only he is a means to profit another mans grant of that which was never his.

4. The next Question is, that the Tenant in Tail commits Treason, suffers a Recovery to the use of himself, and then is attainted, whether the King shall have the Fee-simple, or else whether the office shall not relate to make the Recovery void, and whether he in reversion, who by intention of Law had recovered other Land

Land in value, shall have any benefit against the King, by the Kings priviledge, which he hath to avoid this Recovery.

It is plain, that if this Recovery had been to the use of a Stranger, the King by office should avoid it, and consequently he in remainder would have been remitted.

The difference of the relation of an office to intitle the King to Goods, but from the Attainder, and to Lands from the time of the offence committed are these, 42. E.3. 26. 33. E.3. *Fitz. Forfeiture.* 30, 31. *H. 6, 5. temp. H. 8. Bro. fo. 42.*

I take it, that if the King in this Case had taken the benefit of the Statute of 33. *H. 8. c. 20.* which gives the King all the Lands which a person attainted hath at the time of his Attainder, though there be no office found, then the King might have seized the Land, and the party had had no remedy. But now an office being found, the King is in by the office, which discovers the whole matter of record, and the party hath the benefit thereby, And thereby it appears that *G.* was by the offence, and the relation of the Attainder disabled to make any Conveyance or disposition of his Land; That a Common recovery is a Conveyance; *vide Coke li. primo, Pelhams Case.* So this grant of the reversion to *D.* is good, and not pulled out by the recovery.

But

But it is granted to one that is an Alien born, but made a Denizen of *Ireland*, whether now the King be not intitled to the reversion in Fee, as the Lands of an Alien.

I take it, that he that is free of *Ireland*, is free of *England*, it is true, that one which was born in *Scotland ante*, &c. and these that were born in times past in *Aquitaine*, or in *Normandy* were Aliens born, because these Countries were brought with the Kings of *England* as their former inheritance; but *Ireland* was conquered by H. 2. and inhabited, and planted with Englishmen, and upon the matter made part of the demesnes of the Crown of *England*, as other Islands are, as the *Wight*, and *Jernesey*, *Virginia* and *Greenland*, and therefore the Kings of *England* did not call themselves Kings of *Ireland*, but Lords of *Ireland*, and the Parliaments of *England* bound them till 2. H. 7. and they are governed by the Laws of *England*; And if a Denizen of *Ireland* bring an Action in *Ireland*, and it be adjudged against him there, he may have a Writ of Error in the Kings Bench here, and reverse it, and it is no Plea of the Defendant here to plead in abatement of the Writ of Error, that the Plaintiff is an Alien, which shews, that if he be free of *Ireland*, he is free of *England*, as all born in *Ireland* are. Authorities that *Ireland* is sub-
ject

ject to the Laws of England, and that their errors are to be corrected here, viz. 15. E. 3. Fitz. Record 17. & error. 72. 34. Af 7. 5. E. 2. Fitz. Error. 89. *Natura Brevium*, fol. 22. E.

See *Case de post nati*. 2 R. 3. 12. *Kelway* 11. H. 8. fo. 202. read this case.

6. She is married to a Londoner being an Alien, It may be questioned whether an Alien be capable of the freedom of London, or not? and I say, he is; but there be private orders, that none shall be admitted or made free; but if *de facto*, he be made free, then free he is till he be disfranchised.

7. That the Wife of a Freeman of London may by the custom be a sole Merchant, 1. E. 4. fol. 6. 35. H. 6. 28. 9. E. 4. 35. 21. H. 7. 17.

Points upon the Statute.

1. **W**Hether such a Feme covert, sole Merchant can be a Bankrupt? I think she may, for if by the custom, she may buy, and sell, and sue, and be sued, then she is within the words of the Statute, which is getting her living by buying and selling; for

M other-

Otherwise the Statute would be deluded, and the *Londoners* wives only shall buy and sell, trade.

2. Whether a Denizen of *Ireland* be within this Statute? Besides the former Arguments, see the words of the Statute, which are, &c. But you must intend that she was made Denizen of *Ireland* by Letters Patents under the great Seal of *England*, and not of that of *Ireland*: note an old difference.

3. Whether the Wife can be a Bankrupt within this Statute, when the husband, because he is an Alien, cannot be within the same; As if an Alien marry an Englishman, and they with others rebel, the woman is a rebel, and a traitor, and if she be taken in the Wars, she shall be executed in cold blood, but the husband is but as an Enemy, and by the Law of Arms may be ransomed.

4. But he is afterwards naturalized, Whether he be within the equity of the Statute because he is not within the words? But *tant amount*: amplify this with cases of *tant amount*, and of *qui potest majus, & minus potest si unico vincen:em te à majori unico te*.

5. If a Feme Covert sole Merchant cloope shall be

be a Bankrupt, the difference will be when she clothes carrying her goods with her, so as she leaves her husband *non solvant*, and when she leaves him sufficient; for if such a woman be indebted, no doubt but the Creditor may sue her by the Custom in the Courts of the City, or else he may sue the husband alone at the Common Law: But if he be *non solvant*, her absenting of her self will make them both Bankrupt; her, as a Merchant by custom, and him for his folly to suffer her.

6. Whether her Land shall be sold? it shall; for it may be, it was the credit of her land, that procured her to be trusted.

7. And it shall be sold after her death by the Statute of *primo Jacobi* of Bankrupts.

8. Whether his estate which he hath as Tenant by the courtesie shall be sold; for the estate of Dower of a Bankrupts wife shall never be sold: But I answer, here the Land shall be sold, and he shall not be Tenant by the courtesie. First, note in many cases where there shall be Dower, but yet no tenancy by the courtesie, as *Paynes Case*. Lands are given to a Feme, and to the heirs Males of her body, and she hath issue a daughter, and dies, the husband shall not be Tenant by the courtesie, the

same it is if the issue be ripped out of his mothers' belly after her death: But here the husband is *particeps Criminis*, and a Bankrupt, and his interest shall be sold for his debt; for so were all the debts of his wives making, and his wife traded in his right, and for him, if he so please, and the reversion shall be sold for the payment of the same debts; for they were hers.

The first Division.

Who shall be said a Merchant, or other person seeking his, or her living by buying and selling.

1. **A**N Inn-keeper is indebted, and absents himself; he is a Bankrupt.
2. A Feme Covert sole Merchant in *London*, the Baron is outlawed, the Feme is a Bankrupt.
3. A Feme Covert sole Merchant in *London* cloopes, the husband is *non solvent*, the Feme is Bankrupt, and her land shall be sold.
4. An Officer of the Court takes a Lease of the King, of the sole Preemption of Tyn, he is a Bankrupt for all debts he makes during his Term.
5. Such

5. Such a Lessee pays not his debts in seven years after his Lease expires, and after he leaves off buying, and selling of Tyn, yet he is a Bankrupt: But if his Creditors give him longer time (after he hath given over) and cancel their old Assurances, and take new: he is no Bankrupt.

6. A Grasier that hireth grounds, and buys Cattel and feeds them, and sels them again is a Bankrupt: but if he grase his own Freehold, contrary.

7. A Clothier that sets poor people a work, but himself doth nothing but buy Wool, and sell cloth, is a Bankrupt: But if he work himself, and keep Looms and servants, contrary.

8. An Ironmonger in *London* is a Bankrupt, but a Lock-Smith, contrary.

9. A Goldsmith Hammer-man is not a Bankrupt, but a Goldsmith Shopkeeper is a Bankrupt.

10. A Gentleman Adventurer in *Virginia* is not, but to the East Indies is a Bankrupt.

11. An Adventurer into *Greenland* is not a

Bankrupt, into *Muscovia* is a Bankrupt: No Adventurers for Discovery, and Plantation, are within the Statute, although they carry with them trifles to exchange, and truck with the Savages; for their end is not Merchandizing.

12. A Nobleman hath granted to him the sole importing of Cards, or Glasses, is a Bankrupt; but a Monopolist that hath granted to him the sole making, contrary.

13. A Tailor that useth to make apparel to Noblemen or Ladies, and to buy the stuffs for them, and sets higher prizes in Bills then the stuffs cost, is a Tromper and a Deceiver, but not a Bankrupt.

14. But a Tailor in *London* whom we call a Saleman that keeps a Shop of Apparel to sell ready made is a Bankrupt, he is like a Clothier.

15. No Handicrafts man that is in the compass of the Statute of 5. *Eliz.* is a Bankrupt, although he buy his Materials wherewith he makes his Ware, and sells his Ware again, as a Sho-maker.

16. A Vintner is a Bankrupt, for he buys
wine,

wine, and fells wine : but I doubt of a Brewer.

The second Division.

Who shall be said to be a Subject born within the Realm, or Denizen.

1. **N**O Ambassadors children born in *England* can be; for although they were born within the Realm, yet they are not subjects born:

2. One born upon the coasts of *Denmark*, or the Low Countries is no Bankrupt; but one born upon any part of the French Coasts, or *Brittany*, between *Calice* and the Isle of *Oleron* is a Bankrupt.

3. One born in *Ireland*, or the Isle of *Man*, or in *Garnesey*, &c. or in *Barwick* is a Bankrupt, but neither the *ante nati* nor *post nati* of *Scotland* are within this Statute, but they are both within the Statute of *primo* the King.

4. A Merchant stranger is made Denizen
M 4 upon

upon condition that within seven years he shall marry an English woman, he becomes indebted, and at five years end he marries an Alien, and departs the Realm, and before seven years end she dies, and he marries an Englishwoman, he shall be Denizen, and Bankrupt within this Statute.

5. A Merchant stranger is made Denizen upon condition, that he shall not depart the Realm, and he departs, yet he is a Bankrupt; but if it were for anothers life, contrary; for that is not his own act.

6 One is made Denizen of *Ireland* by Charter under the great Seal of *Ireland*, he is no Bankrupt; but if it were under the great Seal of *England*, contrary.

7. One naturalized by Act of Parliament is Bankrupt.

8. A Merchant stranger is sworn to Allegiance in the Lect, or at Sessions, and dwells here for 12. years, by the Law of Nations this makes him subject to the King, but not within the Statute; for he must be a Subject born, wherein he is different from an Ambassadors Son; for he is born, but no Subject, and this contrary.

9. Baron

9. Baron and Feme travel beyond the Seas by Licence, a son born there is not a Bankrupt, yet he is a Subject, but not a Subject born within the Realm.

10. One born in *England*, becomes a sworn subject to the King of *Spain*, and dwells and trades there for two years: he is within the Statute, and his goods there shall be sold. Doctor Story.

11. A Merchant stranger is naturalized without being sworn to the Supremacy, or Allegiance, he is a Bankrupt notwithstanding the Statute of 7. *Jacobi*, cap. 2.

The third Division.

In what Cases, and what matters make one Bankrupt, as departing the Realm, &c. as in the second Division.

1. **A** Feme Covert sole Merchant of *London* Eloopes with her goods into *Scotland*, she is a Bankrupt.

2. The Baron of such a Feme is out-lawed for the debt of the Feme, the Baron and Feme are both Bankrupts.

3. A

3. A Merchant departs the Realm to Merchandize, and becomes indebted, and to avoid arrests, defers his return, this doth *tank amount*, as a departing of the Realm.

4. One departs the Realm by licence, and becomes a Merchant, and a privy Seal awarded against him; he refuseth to return, he is a Bankrupt.

5. *A Capias de excommunicato capiendo* is awarded against one, who for fear of Arrests, departs the Realm, he is no Bankrupt.

6. The same for departing the Realm, or keeping his house for fear of an Attachment in Chancery.

7. A Merchant indebted, keeps a Shipboard, this is keeping his house.

8. A Maltman becomes a Miller, and he keeps in the Mill.

9. The King grants to a Merchant indebted the keeping of a Castle, who keeps the same by colour of his Office, but for fear of Arrests refuseth to come abroad to Church, &c.

10. A Merchant indebted, departs the Realm

to merchandize, and having loss by Tempest, returns no more, this is not a departing, &c. but an absenting himself.

11. One recovers debt in the Admirals Court, upon a Contract made upon the high Sea, and the defendant being a Merchant lies in execution in the Admirals Prison for six months, he is a Bankrupt.

12. An Apothecary is made Churchwarden, and being indebted keeps in the Church; this is a keeping of his house.

13. One hath no House of his own, but keeps in another mans house, and is a Bankrupt, it is his House.

14. There be now in *England* no Sanctuaries, therefore all priviledged places where the Kings Officers cannot come, and yet there is no Law, nor Justice to be had judicially in the place, is within these words of taking of Sanctuary.

15. To keep in the Tower of *London* is no taking of Sanctuary, but if the Steward, or the Lieutenant be a Merchant, and indebted, and keep the Tower, he is a Bankrupt.

16. One

16. One takes *Grays Inn*, is a Bankrupt, yet they have no exemption Officers, but *usus, & consuetudo, &c.*

17. One hath no house, but an upper chamber, 7. E. 3.

18. One is out-lawed, he is a Bankrupt, but if the Outlary be reversed for want of Proclamations, all done in the mean time by the Commissioners is void; but if it were reversed for Error, contrary.

19. One out-lawed in the County Palatine of *Durham* is a Bankrupt, but contrary in *Ireland*, for the Record is not pleadable here.

20. A Merchant hath a Rectory appropriate, the Quier is not repaired, the Tithes are sequestred, no sequestration within the Statute.

21. A Merchant acknowledges himself to be the villein of *I.S.* to defraud his Creditors, he is a Bankrupt, and yet his goods and body are not subject to Commission.

The fourth Division.

What Freehold Lands of a Bankrupt may be sold by Commissioners.

1. **A** Merchant makes a Feoffment in Fee upon Condition, upon payment of money to re-enter, he becomes a Bankrupt, the Commissioners may tender the money at the day, and sell the Land.

2. A Bankrupt is Tenant in Tail, the Commissioners may sell the Land, and the sale shall be as good, as if it were by Fine, for Tenant in Tail by Fine, &c. may lawfully depart with the Land.

3. One hath a Lease for years upon condition to have in Fee, the Commissioners may sell the Term, and possession.

4. Land is devised to a Bankrupt, the Commissioners may sell, and the Bankrupt shall not wave the devise.

5. A Bankrupt hath a villein, and manumits him, the Commissioners shall not sell *in favorem Libertatis*.

6. A

6. A Baron useth merchandize, and is *not* solvent, the Commissioners shall not sell his Barony.

7. A Rent seck whereof is no seisin shall be sold, and good without Attornment.

8. All offices of inheritance shall be sold, as the Wardenship of the Fleet, or a Jaylor by inheritance; contrary of all offices of trust, that are but for life.

9. A Monopoly granted to one, and his Assignes, as the sole making of Cards, &c. shall not be sold, because it is a void Patent, and nothing passes by it.

10. The office of sole Printing of Law Books is void, therefore not saleable.

11. A Bankrupt becomes Lunatique, an office is found, yet the Land shall be sold.

12. A Bankrupt is Tenant in tail, the remainder in the King of the Provision of the King, sale by the Commissioners shall not be good against the issue in Tail; for the Bankrupt neither by Fine, nor Recovery could lawfully part with it but for his life.

13. A

13. A Bankrupt hath a Seigniory, the Commissioners seize, before assignment a Tenancy escheats, the Tenancy shall be sold, but if after seizure of the Seigniory, and before the Escheat the Bankrupt dies, the Commissioners shall not sell by this Statute, but by the Statute of *primo Jac.* the Tenancy shall be sold.

14. Two Joyntenents, one is a Bankrupt, the Commissioners seize a Moity, the Bankrupt dies, no part shall be sold by this Statute, but by *primo Jacobi* a moity shall be sold; for that Statute is, that the Commissioners shall proceed, as if he were living.

15. A Merchant takes a wife after he is a Bankrupt, she shall not have Dower against the Vendee.

16. A Feme Covert sole Merchant inheritrix in London is a Bankrupt, her land shall be sold, and her husband shall not be Tenant by the courtserie.

17. A Bankrupt commits Felony, the Land shall not escheat, but the Commissioners may sell it.

The fifth Division.

What Copy-hold Lands shall be sold, and in what case Composition shall be made with the Lord, and in what not.

1. **T**He Lord sells the Freehold of one sole Copyholder to *A.* the Copy-holder is a Bankrupt, the Commissioners shall sell.

2. The Lord is to be compounded with for the Admission by the Statute, and in this Case here can be neither Surrender nor Admission, yet by the equity of the Statute the Lord must be compounded with.

3. Commissioners sell a Copy-hold, the Vendee tenders to the Lord a competent Fine, which the Lord refuses, and will not admit the Vendee, the Vendee may enter.

4. If a Copy-hold be intailed to a Bankrupt in a Manner where recoveries are used to cut off intails, Commissioners may sell, but if no Custom be for recoveries, contrary.

5. A

5. A Copy-hold is surrendered to the use of a Bankrupt, who will not take it up, or sue to be admitted, because it shall not be liable to his Creditors; the Commissioners shall sell it.

6. A Copy-hold is surrendered to the use of a Bankrupt, who will not be admitted; the Commissioners shall sell, but the Vendee shall pay two Fines.

7. A Copy-holder (where the Feme by Custom shall have Dower) surrenders into the hands of two Tenants, and dies, the Feme marries a Bankrupt, the surrendree is admitted, the third part of the Feme shall be sold, but no remedy for the damage betwixt the death of the husband, and the admittance.

8. One surrenders Copy-hold to the use of a Bankrupt, the Lord dissolves his Court, yet the Commissioners shall sell.

N

The

The sixth Division.

*What Annuities, Fees, Goods, Chattels, Debts, &c.
Commissioners may sell.*

1. **B.** Hath a Lease for years made unto him upon condition that he shall not alien, yet the Commissioners may sell, and this is no forfeiture.
2. **B.** hath the next advowson, the Church is void, the Commissioners sell the Presentation, the Vendee shall present, and no Symonie.
3. A Bankrupt purchases Land with warranty, the Vendee of the Commissioners shall not vouch, but he shall rebut.
4. Commissioners sell a rent, or reversion, this is good without Attornment.
5. A Bankrupt becomes Lunatique, his goods shall be sold ; as before of Lands, &c.
6. Lord and Tenant, the Lord is a Bankrupt,

rupt, the tenant dies, the Commissioners shall sell the money, or debt due for relief.

7. The same of a Herriot.

8. The Lord is a Bankrupt, the tenant dies, the Commissioners sell the Relief-money, and the Herriot, the executors pay the relief, the heir shall not pay a Herriot.

9. The King Leases the Aulnage of *London* for years, the Lessee is a Bankrupt, the Lease shall be sold.

10. Lord of a Leet is a Bankrupt, the Commissioners shall sell the Amercements past, and the Vendee shall have an action of debt.

11. A Lease for years is devised to *A.* if he live so long, the remainder to one *B.* the Commissioners shall not sell the possibility.

12. Land is extended, and delivered to the Extenders, because too high, another defeats this Execution, by extending of a former Statute, the first is a Bankrupt, the Commissioners shall sell the possibility.

13. A Rent charge shall be sold, yet it is not within the words.

14. The same Law of a Common in gross.

15. It is the custom in *Surrey*, that certain Heir-Looms shall go with the Land, and not to the Executors, the Land is intailed, Tenant in Tail is a Bankrupt, the Heir-Looms may be sold from the Land, and the issue hath no remedy.

16. Two Tenants in Common recover dammages in trespass, the one dies, the other is a Bankrupt, all the damages shall be sold.

17. A Bankrupt recovers damages by an erroneous judgement, the Commissioners assign them to the Creditors, who recovers them in execution, the Judgement is reversed, the sale was good, but the assignees or Vendees shall make restitution.

18. A villein is a Merchant, the Lord seizes all his goods, and imprisons his person for six moneths, he is a Bankrupt, the Lord shall have his goods, but his debts shall be sold.

19. A villein Merchant is a Bankrupt, the Lord seizes his goods, yet the Commissioners may sell.

20. A Merchant by Outlary becomes a Bank-

Bankrupt, the Creditors shall have his goods, and not the King.

21. A Merchant Bankrupt commits Felony, his Creditors, and not the King shall have his goods.

22. A Bankrupt is *felo de se*, the Almoner shall have his goods, notwithstanding this Statute, but by *primo Iacobi* the Commissioners shall have them.

The seventh Division.

Who shall be said a Creditor that shall be relieved, and who not, and what shall be said to be a just debt intended?

1. **O**Ne sole Creditor shall not by this Statute sue the Commission; for it ought to be at the Sute of his Creditors.

2. Merchant Morgages his Lands, the Mortgagee may choose to come in as a Creditor.

3. A Merchant enters into a Statute, or Recognizance, the Conizee is a Creditor, else

he shall have neither Land, nor money, if he come not, and contributes.

4. A Merchant pledges goods, and becomes Bankrupt, the party need not come in.

5. The plaintiff that hath the defendants body in execution, shall not come in to be relieved.

6. But he that hath a judgement for a debt may come in before execution.

7. One that hath the Bankrupts body in execution upon a Statute Merchant may come in.

8. One that recovers damages in Wast, or Assise or trespass, shall not be relieved.

9. An Informer recovers money forfeited by a special Statute, he shall not be relieved.

10. A Bankrupt is indebted to the King, Commissioners seize the Bankrupts goods, process comes to the Sheriff, he shall leavy the Kings debt before sale; but if they had sold before the process awarded, the Sale would have been good.

11. A Merchant is imprisoned, and becomes debtor

debtor to *A.* six moneths pass, *A.* shall have relief; for he is not a Bankrupt by relation.

12. A Bankrupt is committed to prison by Commissioners, because he will not answer interrogatories, the Jaylor gives him credit for victuals, he shall not be relieved, although he come in before distribution, nor any man that trusts him after.

13. A Bankrupt is indicted and convicted of erecting of Cottages, and entertaining of Inmates, contrary to the Statute of *Eliz.* 31. *cap.* 7. which gives 10*s.* a moneth forfeiture to the Lord of the Leet where the offence was committed, and an Action of debt for the money: he shall not be relieved for this debt: because no Creditor.

14. A Merchant is bound as Surety for a Gentleman, and neither of them will pay, but for fear of Arrest the Merchant keeps his house; the Creditors shall be relieved. *Denhams Case.*

15. An Executor becomes Bankrupt, a Legatee shall be relieved.

16. A Decree is made in Chancery, that a Merchant shall pay, 20*l.* to *I.S.* as a debt due, in equity *I.S.* shall be relieved. 17. But

17. But it is decreed in *Star Chamber*, that a Merchant for a wrong done to *I. S.* shall pay him 20. l. and the Merchant becomes a Bankrupt, *I. S.* shall not be relieved.

18. One hath a debt not yet due, he shall be presently relieved with a rateable part of abatement for the time.

19. Four Moneths are past, and distribution made, and other goods and Lands come or descend to the Bankrupt, the Creditors shall have no relief of them.

The eighth Division.

What Conveyances made by a Bankrupt, before or after he is Bankrupt, shall be good, or fraudulent and void.

1. **A** Merchant to defraud his Creditors, conveys his Lands to the Crown, with a secret hope, that some friend of his (a Courtier) shall get them again, this Conveyance is void; for the King shall never be made an instrument of deceit, 18. E. 3.

2. A Bankrupt takes a Feme after he is a Bank-

Bankrupt, she shall not be indowed, but if Lands afterwards descend to him, of that she shall be indowed.

3. A Bankrupt is disseisor, Commissioners sell the Land, and before the deed be inrolled, the disseisee releases to the Bankrupt, the Vendee shall have the benefit of this release : *Questio difficilis.*

4. A Bankrupt to defraud his Creditors by Coven with a Lord of a Liberty, becomes a Clerk convict, yet the Commissioners shall sell.

5. Lord and Tenant, the Tenant makes a Feoffment to deceive the Lord of the Wardship of his heir within age, the tenant becomes a Bankrupt, the land shall be sold; for although the Conveyance were fraudulent against none but the Lord, yet there was a Trust between the Feoffor and the Feoffee.

6. A Conveyance made by a Merchant in Marriage with his daughter is good. But if he make such a marriage, and conveyance of purpose to defraud his Creditors, with an intent, that his daughter shall rather have his goods, than his Creditors, the Land shall be sold.

The ninth Division.

What shall be said to be a Concealment of a Bankrupts goods, Lands, Estate, or person.

1. **T**HE Bankrupts wife refuses to be examined, no remedy.
 2. The Bankrupts wife is examined, but refuseth to discover, either her Husbands estate, or his person, she shall not be committed.
 3. A Merchant *bona fide*, sells Land to I.S. and afterwards becomes Bankrupt, I.S. may choose to shew his Evidence.
-

The tenth Division.

What Declaration, or Accompt the Commissioners shall make to the Creditors of Bankrupt, and what remedy is there for the same.

1. **I**F the Bankrupt die, yet his Executors shall have an action against the Commissioners,

fioners, but if all the Commissioners die, their Executors, nor the Executors of the Survivor are not accountable.

2. If after seizure, and before distribution all the Commissioners but one die, he cannot proceed alone, but a new Commission shall be awarded, and the new Commissioners shall call the old to accompt.

3. If the Commissioners will not pay a Creditor his rateable part, he hath his Action of debt.

The eleventh Division.

What authority the Commissioners have over the body of the Bankrupt.

The twelfth Division.

What danger it is to be out of the Kings protection by force of this Statute.

F I N I S.